SUPREME COURT OF THE UNITED ST...

No. 209.

EDWARD W. BURBANK, PLAINTIFF IN ERROR,

vs.

CHARLES A. CONRAD AND L. L. CONRAD.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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1, 2 Supreme court of L'a.

Filed February 20th, 1871.
(Signed) M. P. JULIAN,
Deputy Clerk.

STATE OF LOUISIANA,
Fifth District Court for the Parish of Orleans:

Petition.—Filed Febr'y 15, 1869.

E. W. BURBANK
vs.
CHA'S M. & L. L. CONRAD. } No. 350.

To the honorable the fifth district court for the parish of Orleans:

The petition of Edward W. Burbank, a resident of this parish, respectfully represents:

That he is the owner and possessor of the one undivided half of a certain lot of ground situate in the first district of the city of New Orleans, in the square bounded by Julia, Magazine, Notre Dame, and Tchoupitoulas streets, measuring sixty-five feet front on Julia street by one hundred and fifty-one feet deep on the side towards Magazine street, one hundred and fifty-eight feet nine inches in depth on the other side, adjoining the property Peters Millance and others; fifty-five feet seven inches in width in the rear, adjoining the first engine com-
3 pany, No. 6, the whole in conformity to a plan drawn by Jos. Pilie, surveyor, and annexed to an act passed before C. Pollock, notary, on the 12th May, 1836, and title to which petitioner acquired by adjudication made to him by *by* Cuthbert Bullitt, marshall of the United States for the eastern district of Louisiana, under and by virtue of a writ of venditione exponas issued by the district court of the United States for the eastern district of Louisiana, in the suit entitled The United States versus Ten Lots of Ground, the property of Charles M. Conrad, No. 7653 of the docket of said court, and adjudication took place on the 22d March, 1865, as more fully and at large will appear by the marshall's deed of sale of the 29th March, 1865, hereto annexed and made part of this petition, marked "A."

Now petitioner represents the joint owners of the other undivided half of said property are Charles A. Conrad and L. L. Conrad, residing in this city.

That your petitioner is unwilling to longer remain in undivided ownership of said property, and desire a partition thereof.

That from nature and character of said property the same cannot be conveniently divided in kind, and such division would cause a diminution of its value; and hence petitioner desires the partition by licitation.

4 That notwithstanding amicable demand, the said Charles A. Conrad and L. L. Conrad refuse to make a partition thereof with petitioner.

Wherefore, petitioner prays for the citation of, and after due proceedings, judgment against, said Charles A. Conrad and L. L. Conrad, decreeing a partition of said described property, in the proportion of one-half to petitioner and one-half to said Charles A. Conrad and L. L. Conrad jointly; that an order of inventory issue, that all orders required in the premises issue for costs and general relief.

For petitioner.
(S'g'd) FELLOWS & MILLS.

REC. 209—1

Order.

Let this suit be filed and let Octave Morel, notary public, be appointed to make an inventory as within prayed for according to law, and let F. A. Woolfley, esqr., and A. A. Du Buisson, esqr., be appointed appraisers herein.

New Orleans, Febr'y 15, '69.

(S'g'd) CHA'S LEAUMONT, *Judge.*

Citation on Cha's A. Conrad, Febr'y 15, 1869.

E. W. BURBANK
vs.
CHA'S A. & L. L. CONRAD. } No. 350.

STATE OF LOUISIANA,
Fifth District Court for the Parish of Orleans, in the City of New Orleans:

M'r CHA'S A. CONRAD, *of this City:*

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fifth district court for the parish of Orleans, in ten days after service hereof.

Witness the honorable Charles Leaumont, judge of the said court, the fifteenth day of February, in the year of our Lord 1869.

(S'g'd) PHILIP POWER, J'R,
D'y Clerk.

Sheriff's return.

Received Febr'y 15, 1869, and on the 17th day of same month and year served copy of the within citation and accompanying petition personally on C. A. Conrad, def't herein. Ret. same day.

(S'g'd) H. T. LYND,
D'y Sheriff.

Citation on L. L. Conrad, February 15, 1869.

E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 350.

STATE OF LOUISIANA,
Fifth District Court for the Parish of Orleans, in the City of New Orleans:

M'r L. L. CONRAD, *of this City:*

You are hereby summoned to comply with the demand con-
6 tained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fifth district court for the parish of Orleans, in ten days after service hereof.

Witness the honorable Charles Leaumont, judge of said court, the 15th day of February, in the year of our Lord 1869.

(S'g'd) PHILIP POWER, J'R,
D'y Clerk.

Sheriff's return.

Received February 16, '69, and after due and diligent search and enquiry, I have been credibly informed that L. L. Conrad is absent from the city. Feb'y 27, '69. Returned not found.

(S'g'd) T. BLOOMFIELD,
D'y Sheriff.

Notice of appointment to Notary Octave Morel, Feb'y 15, 1869.

E. W. BURBANK
vs.
C. A. & L. L. CONRAD. } No. 350.

STATE OF LOUISIANA,
Fifth District Court for the Parish of Orleans:

To OCTAVE MOREL, Esq.:

SIR: Please to take notice that you have been appointed to take an inventory in the above-entitled case this Monday, the 15th day of February, 1869.

(S'g'd) PHILIP POWER, J'r,
D'y Clerk.

Sheriff's return.

Received February 16th, 1869, and on the 17th day of same month and year served copy of the within notice personally on O. Morel, esq. Ret. same day.

(S'g'd) H. F. LYND,
D'y Sheriff

7 *Notice of appointment to A. A. Du Buisson as appraiser, February 15th, 1869.*

E. W. BURBANK
vs.
C. A. & L. L. CONRAD. } No. 350.

STATE OF LOUISIANA,
Fifth District Court for the Parish of Orleans:

To A. A. DU BUISSON, Esq.:

SIR: Please to take notice that you have been appointed appraiser in the above-entitled case this Monday, the 15th day of February, 1869.

(Signed) PHILIP POWER, J'r,
D'y Clerk.

Sheriff's return.

Received February 16, '69, and on the same day, month, and year served a copy of the within notice of appointment as appraiser on A. A. Du Buisson in person. Ret. same day.

(S'g'd) GEO. H. TARDY,
D'y Sheriff.

Notice of appointment as appraiser on F. A. Woolfley, Feb'ry 15th, 1869.

E. W. BURBANK
vs. } No. 350.
C. A. & L. L. CONRAD.

STATE OF LOUISIANA,
Fifth District Court for the Parish of Orleans:

To F. A. WOOLFLEY, Esq.:

SIR: Please to take notice that you have been appointed appraiser in the above-entitled case this Wednesday, the 15th day of February, 1869.

(S'g'd) PHILIP POWER, J'R,
D'y Clerk.

Sheriff's return.

8 Received Febr'y 16, '69, and on the 17th day of February, 1869, I served a true of the within notice of appointment as appraiser on M'r F. A. Woolfley, by leaving the same at his office, No. 13 S't Charles st. Returned same day.

(S'g'd) TH. BLOOMFIELD,
D'y Sheriff.

Deed of sale.—U. S. marshall to E. W. Burbank.

Deed of sale.—U. S. marshall to E. W. Burbank.—Filed Feb'ry 15th, 1869, annexed to petition.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, City of New Orleans:

Whereas I, Cuthbert Bullitt, marshall of the United States for the eastern district of Louisiana, under and by virtue of a writ of venditione exponas to me directed by the honorable the district court of the United States for the district aforesaid, in the suit entitled The United States versus Ten Lots of Ground, the property of Charles M. Conrad, No. 7653 of the docket of said court, did expose at public sale, according to law, and after all the previous legal requisites had been fulfilled and complied with, and after having given full thirty days' notice of said sale in the True Delta, one of the daily newspapers printed and published in the city of Orleans, viz, on the 15 & 22d February, 8, 15, and 22d
9 March, 1865, the following-described property, viz:

The one undivided half of a certain lot of ground situate in the first district of the city of New Orleans, in the square bounded by Julia, Magazine, Notre Dame, and Tchonpitoulas streets, measuring 15 feet front on Julia street by 151 feet deep on the side towards Magazine street, 153 feet 9 inches in depth on the other side adjoining the property of Peters Miller and others, 55 feet 7 inches in width in the rear adjoining the first engine company, No. 6, the whole in conformity to a plan drawn by Jos. Pilié, surveyor, and annexed to an act passed before C. Pollock, notary, on the 12th May, 1836, on Wednesday, the 22d day of March, (1865,) in the year one thousand eight hundred and sixty-five, at the hour of twelve o'clock meridian, at the Merchants' Exchange, No. 18 Royal street, when, after making due proclamation of said sale, and duly crying the said undivided lot and appurtenances, the same were adjudicated to Edward W. Burbank, he being the last and highest bid-

der thereon, for the price and sum of one thousand dollars in cash at the time of adjudication, which said sum I hereby acknowledge to have received in ready current money of the United States of America.

And it appears from a duly-certified copy from the records in
10 the office of the recorder of mortgages for the parish of Orleans, which certificate is annexed to the venditione exponas, under the authority of which the above-described property has been sold, that there are none other than the following mortgages recorded against the above-described property, viz:

1*a*–2*a*. B. P 1, fo's 370 and 391. The privileges in favor of the boards of commissioners of the 1st & 2d draining districts on the property within their respective districts.

3dly. B. 51, fo. 299. The one granted by him in favor of E. A. Canon, judge of the 2d district court, as per act before H. B. Cenas, notary, dated 8th and recorded 10th April, 1847, affecting the property above described, to secure, 1stly, the re-imbursements of the portion accruing to his minor children, Charles M. A. and Lawrence Louis Conrad, out of the price at which the real estate belonging to the community between him and his deceased wife, which was adjudicated to him, amounting to $7,062.50. 2dly. To secure the faithful performance of his duties as tutor of said minors.

B. 66, folio 448. The one he granted as tutor, &c., in favor of J. N. Lee, judge of the 2d district court, per act before W'm Christy, notary, dated the 31st May, and recorded the 1st June, 1855, to secure the rights of his said minor children in the succession of their deceased mother, amounting to $7,062.50 on the property hereinabove described.

11 Now, therefore, know all men by these presents that I, the U. S. marshall aforesaid, in consideration of the premises, and by virtue of the laws in such case made and provided, and under the authority of the acts of Congress of 6th August, 1861, the 17th July, 1862, and the 3d March, 1863, in relation to confiscation, do hereby sell, transfer, assign, and set over unto the said Edward W. Burbank, as aforesaid, his heirs, administrators, executors, and assigns, all and singular the above-described property, with all the buildings and improvements thereon, rights, ways, privileges, hereditaments, and appurtenances to the same belonging and in any wise appertaining, to have and to hold the above-described property, with all the buildings and improvements thereon, rights, ways, &c., &c., as aforesaid, unto the said Edward W. Burbank, his heirs and assigns as aforesaid, to his and their proper use, benefit, and behoof forever.

In testimony whereof I grant these presents under my signature as U. S. marshall aforesaid, in the said city of New Orleans, on this 29th day of March, in the year of our Lord one thousand eight hundred and sixty-five, and of Independence of the United States of America the eighty-ninth.

(S'g'd) CUTHBERT BULLITT,
U. S. Marshal.

Executed in presence of—
12 A. BOISBLANC,
J. J. PREIS.

[$1 int. rev. stamp.] [50-cent int. rev. stamp.]

OFFICE OF MORTGAGES.

The undersigned, recorder of mortgages for the city of New Orleans, parish of Orleans, State of Louisiana, certifies that in the records in his

office the following mortgages standing in the name of Charles A. Conrad, and recorded against—

The one undivided half of a certain lot of ground, situate in the first district of said city, in the square bounded by Julia, Magazine, Notre Dame, & Tchoupitoulas streets, measuring 65 feet *feet* from on Julia street by 151 feet deep on the side line towards Magazine street, 153 feet 9 inches in depth on the other side line towards the property of Peter Miller and others, 55 feet 7 inches in width in the rear adjoining the fire-engine co. No. 6. The whole in conformity to a plan drawn by Jos. Pilié, surveyor, and annexed to an act passed before C. Pollock on the 12th May, 1836, viz:

2°. B. 51, f. 299. The one by him granted in favor of E. A. Canon, judge of the second district court, as per act before H. B. Cenas, notary, dated 8th and recorded 10th April, 1847, on the above-described property to secure, 1°, the re-imbursement of the portion accruing to his minor children, Charles A. M. A. and Lawrence L. Conrad, out of the price at which the real estate belonging to the community between
13 him and his deceased wife and which was adjudicated to him to $7,062.50 to secure the faithful performance of his duties as tutor of said minors, has been cancelled and annulled this day from his aforesaid record.

New Orleans, March 30th, 1865.

{ STATE OF LOUISIANA, }
{ OFFICE OF MORTGAGES. }

(S'g'd) J. W. MADDEN,
Recorder.

United States district court, eastern district of Louisiana, city of New Orleans.

I hereby certify that the foregoing deed of sale has this day been duly recorded in this office in Sales-book B, folios 68 and 69. Clerk's office, March 31st, 1865.

[SEAL.] (S'g'd) W. S. BENEDICT,
Dy Clerk.

I, register of conveyances, certify that the pursuant act was this day recorded in this office in book 91, fol. 60.

New Orleans, 12th Febr'y, 1866.

(S'g'd) T. LAUZE,
Register.

Answer and exception of C. A. Conrad.—Filed March 1st, 1869.

J. W. BURBANK
vs. } No. 350.
C. A. AND L. L. CONRAD.

Fifth district court for parish of Orleans.

Charles Angelo Conrad, one of the defendants herein, excepts to plaintiff's petition for this, to wit:

14 That prior to the institution of this suit C. M. Conrad, the defendant and party accused in the suit entitled United States vs. Ten Lots of Ground, the property of Charles M. Conrad, No. 7653 of the docket of the district court of the United States for the eastern district

of Louisiana, had move' said district court of the United States, by way of writ of error coram vobis, to correct the return of the marshal of the United States for said district to the warrant of seizure therein on the ground that the same was erroneous and false, and that the plaintiff herein was a party to said motion, and that the same is still pending and undecided.

This defendant further excepts to said petition for this, that said C. M. Conrad has filed a libel of review in said case No. 7653 setting forth that various errors of law were apparent on the face of the decree and on the face of the record and proceedings on which said decree was founded, and praying that said decree be revised, reviewed, and set aside and held for nothing, and your respondent avers that said libel of review is still pending. Wherefore this respondent alleges that this suit is premature and prays that the petition be dismissed with costs.

In case the foregoing exception be overruled, then this defendant, for answer to plaintiff's petition, denies all and singular the allega-
15 tions therein contained, especially the allegation that he has any right or title to any portion of the lot of ground mentioned in said petition, and avers that said lot belongs wholly and exclusively to this respondent and his brother, Lawrence Lewis Conrad.

Further answering, this respondent avers that if any portion of said lot of ground was sold by the marshal of the United States to plaintiff, as is by him alleged, said sale was illegal, irregular, null and void, and conveyed no title whatever to any portion of said lot. That if any such decree of the district court of the United States as that mentioned in plaintiff's petition was rendered, the same was null and of no effect, and your respondent assigns the following grounds, among others, of the nullity thereof:

1st. That said suit was instituted and said proceedings took place on the admiralty side of said court, whereas the same should have been instituted and carried on on the common-law side thereof. Said proceedings were, therefore, coram non judice.

2d. That no seizure of said one-half (½) lot of ground was ever made by order of the President of the United States prior to the institution of proceedings for the condemnation of the same, is required by the act of 17th July, 1862, on which said proceedings purport to be founded.

16 3d. That no seizure of said property was ever made by the marshal after the institution of proceedings against it as required by law and by the order of the court, and the statement to the contrary contained in the marshal's return is absolutely false.

4th. That none of the formalities prescribed by law in order to notify and protect the owners of property libelled in admiralty and revenue seizures in proceedings in rem or in personam, or in both, were observed in said case.

That no seizure of the property was ever made, and no possession thereof ever taken, by the marshal, and the statement to the contrary contained in return to the warrant of seizure is absolutely untrue.

That no notice, citation, summons, or special monition was ever given to said C. M. Conrad, the defendant and accused in said proceedings, or to your respondent, to appear and answer said libel, and show cause, if any he had, why the said property, and his right, title, and interest therein should not be condemned, as directed by law and by the order of the said court.

That said C. M. Conrad was not called to be defaulted, nor was he

pronounced by the court to be in contumacy and default, as required by law and by the rules of the Supreme Court of the United States.

That no property corresponding in description with that whereof plaintiff claims to be the owner of one-half was mentioned, either
17 in the libel or in the general monition in said suit, but only a vacant lot of the same dimensions, whereas the lot owned by your respondent is nearly covered by a large and valuable brick warehouse; and your respondent avers that the manifest effect or tendency of these misstatements, omissions, and irregularities, combined with this misdescription, was both to depreciate the apparent value of the same and to prevent the knowledge of the seizure thereof from reaching the parties interested therein; and your respondent positively avers that, in point of fact, no such knowledge ever did reach him until long after the time when the plaintiff alleges the same was adjudicated to him, and he avers that said omissions, misstatements, and misdescriptions operated as a fraud on the Government and on this respondent.

Said decree was also null and void for this, to wit:

5th. That the said case was tried, and the facts therein were found by the judge of said court alone, and without the aid or intervention of a jury, contrary to the Constitution and laws of the United States.

6th. That said property was not found to have belonged "to a person who had engaged in rebellion, or to a person who had given aid or comfort thereto," as required by the statute of 17th July, 1862, on which said proceedings were professedly founded.

7th. Your respondent farther avers that, in view of the above
18 and other manifest errors of law in said decree, and in the proceedings thereon which the same was founded, C. M. Conrad, the defendant in said suit and the party accused, had, prior to the institution of this suit, applied to the court whereby said decree of condemnation had been rendered, for a writ of error coram robis, to correct the return of the marshall of the United States to the warrant of seizure therein on a material point, on the ground that the statement therein that the property libelled had been seized by him, same was erroneous and false; that the plaintiff herein was made a party to said application, and that the same is still pending and undecided.

He further avers that said C. M. Conrad has filed a libel of review, praying that said decree condemning said property as forfeited to the United States be revised, reviewed, and held for nothing on account of various errors of law apparent on the face thereof and in the proceedings on which the same was founded; and this respondent submits that further proceedings in this suit should be suspended until a decision can be had on said writ of error coram robis, on the writ of error to the circuit court of the United States, which said C. M. Conrad has
19 averred his intention to take as soon as said error in the record is corrected, and also until the libel of review now pending in said case shall have been finally decided.

Farther answering, your respondent avers that even if said decree should be decided to be valid and sufficient to convey any right, title, or interest which said C. M. Conrad, the defendant and party accused in said suit and the alleged owner of the property therein libelled, might have had in said property, said C. M. Conrad had not at the time said libel was filed, nor at the time said decree of condemnation was rendered, nor on the 17th July, 1862, any right, title, or interest whatever in the property aforesaid, but the same at those dates belonged exclusively to this respondent and his brother, L. Lewis Conrad, and that said decree, according to your respondent's understanding thereof, condemned

the property of said C. M. Conrad [illegible]
erty of your respondents. But if said [illegible]
condemn the interest of your [illegible]
was unauthorized by said act of 17th July, 1862, [illegible]
meaning and intent thereof; or if there be [illegible]
does authorize the condemnation of the [illegible]
offence of another, then said act is [illegible]
20 the United States, particularly to section 5 of [illegible]
thereto.

Wherefore respondents, reserving the right hereafter to [illegible]
property in case the decree of condemnation above referred [illegible]
be hereafter reversed, or annulled and set aside on a writ of [illegible]
peal, bill of review, or any other mode of proceeding, prays [illegible]
of the nullity of said decree and of any adjudication [illegible]
made by the United States marshal of the property [illegible]
plaintiff's demand be rejected and dismissed at plaintiff's [illegible]
such further orders and relief as his case may require, and [illegible]
pray, &c., &c.

(S'g'd) C. M. CONRAD.
"
SULLIVAN, BILLINGS & HUGHES,
Att'ys for Defendant, C. M. Conrad.

Exception continued, June 5, 1869.

(Extract from minutes.)

Exception continued, June 5, 1869.

E. W. BURBANK
vs.
C. A. & L. L. CONRAD. } No. 350.

The exception in this case was ordered to be continued to Monday, 7th inst., at 10 o'clock a. m.

Exception continued, June 7, 1869.

(Extract from minutes.)

E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 350.

21 The exception in this case is ordered to be continued to Tuesday, 15th inst.

Exception continued.

(Extract from minutes.)

Exception continued, June 15th, 1869.

E. W. BURBANK
vs.
C. A. & L. L. CONRAD. } No. 350.

The exception in this case is ordered to be continued indefinitely.

Order.—Case continued, Nov'r 17th, 1869.

(Extract from minutes.)

E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 350.

This cause is continued regularly.

Exception continued, December 11, 1869.

(Extract from minutes.)

Exception continued, December 11, 1869.

E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 350.

The exception herein is continued by preference.

Exception continued, January 15, 1870.

(Extract from minutes.)

E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 350.

The exception in this case is continued to Monday, 24th inst., at 10 a. m.

22 *Motion to appoint Cha's L. Conrad curator ad hoc.—Filed January* 15, 1870.

Fifth district court for the parish of Orleans.

E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 350. Motion appointing Cha's L. Conrad curator ad hoc.

On motion of Fellows & Mills, attorneys of E. W. Burbank, plaintiff in the above-entitled cause, and on suggesting to the court that, as appears by the return of the sheriff on the citation addressed to L. L. Conrad, one of defendants, the said L. L. Conrad is not in this parish, but was and is an absentee, it is ordered that Cha's L. Conrad be, and he is hereby, appointed curator ad hoc to represent said absent defendant in this cause, and thas as curator ad hoc he be cited in this cause.

Notice of appointment to curator, January 17, 1870.

E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 350.

STATE OF LOUISIANA,
Fifth District Court for the Parish of Orleans:

To CHA'S A. CONRAD, Esq., *Att'y:*

SIR: Please to take notice that you have been appointed curator ad

hoc to represent the absent defendant in the above-entitled case this 17th day of January, 1870.

(S'g'd) F. A. LUMINAIS,
D'y Clerk.

23 *Sheriff's return.*

Received January 17th, 1870, and on the 18th day of the same month and year served a copy of the within notice of appointment on Charles A. Conrad, esq., in person. Returned same day.

(S'g'd) J. W. L. LEECH,
D'y Clerk.

Citation on curator ad hoc, January 17, 1870.

E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 350.

STATE OF LOUISIANA,
Fifth District Court for the Parish of Orleans, in the City of New Orleans:

M'r L. L. CONRAD,
(Through Cha's A. Conrad, esq., curator ad hoc:)

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fifth district court or the parish of Orleans within ten days after the service thereof.

Witness the honorable Charles Leaumont, judge of the said court, this 17th day of January, in the year of our Lord 1870.

(S'g'd) F. A. LUMINAIS,
D'y Clerk.

Sheriff's return.

Received January 17th, 1870, and on the 18th day of the same month and year served a copy of the within citation and accompanying
24 petition on Charles A. Conrad, esq., in person, curator ad hoc herein. Returned same day.

(S'g'd) J. W. T. LEECH,
D'y Sheriff.

Exception continued.—Jan'y 24th, 1870.

(Extract from minutes.)

E. W. BURBANK
vs.
C. A. &. L. L. CONRAD. } No. 350.

The exception in this case is continued indefinitely.

Exception continued.—Jan. 29th, 1870.

(Extract from minutes.)

E. W. BURBANK
vs.
C. A. & L. L. CONRAD. } No. 350.

The exception herein is continued by preference.

Amended exception and answer.—Filed Feb'y 4th, 1870.

Fifth district court, parish of Orleans.

E. W. BURBANK *vs.* C. A. AND L. L. CONRAD. } No. 350. Amended exception and answer.—Filed Febr'y 4th, 1870.

And now comes Charles A. Conrad, one of the defendants herein, and by way of amendment to his original exceptions and answer herein, avers:

That since the filing of the original exceptions and answer herein he has taken a writ of error from the circuit court of the United States for this circuit and district to revise and reverse the decree rendered by the district court of the United States, under which plaintiff
25 alleges that said property was sold and was purchased by him.

Defendant farther amends his said petition by averring that he and his said brother acquired the property in said petition described from their father, Charles M. Conrad, by act passed before James G. Parkerson, recorder of the parish of S't Mary, and ex-officio notary public, on the third (3d) day of June, 1862. Wherefore respondent prays that plaintiff's demand be rejected, as prayed for in his original exceptions and petition filed herein.

And will ever pray, &c.

(S'g'd) C. M. CONRAD,
Of Counsel for C. A. Conrad.

Answer of curator ad hoc to L. L. Conrad.—Filed Febr'y 5, 1870.

Fifth district court, parish of Orleans.

E. W. BURBANK *vs.* C. A. AND L. L. CONRAD. } No. 350.

And now comes into court the curator ad hoc appointed to represent Lawrence Lewis Conrad, one of the defendants, and, before answering, adopts all the exceptions, original and amendments, filed herein on behalf of the defendant Charles A. Conrad herein, and in case those exceptions be overruled, and not otherwise, he adopts all the allegations, averments, and defences made on behalf of, and in the answer of, and amended answer of said Charles A. Conrad already filed herein.
26 Wherefore he prays that said petition be dismissed as is prayed in the exceptions and answer of said Charles A. Conrad at plaintiff's cost and for general relief.

And will ever pray, &c., &c.

(S'g'd) CHA'S ANGELO CONRAD,
Curator ad hoc.

Exceptions renewed for merits.—Filed February 12th, 1870.

(Extract from minutes.)

E. W. BURBANK *vs.* C. A. AND L. L. CONRAD. } No. 350.

The exception herein came on this day for trial.
C. M. Conrad for C. A. Conrad.

C. A. Conrad for L. L. Conrad.
Fellows & Mills for E. W. Burbank.
When, after hearing counsel, said exceptions was continued to be tried with the merits.

Bill of exceptions.—Filed February 23, '70.

5th district court, parish of Orleans.

E. W. BURBANK
vs.
C. A. AND L. L. BURBANK. } No. 350.

Be it known and remembered that on the trial of the exceptions and amended exceptions herein, counsel for C. A. Conrad and the curator ad hoc for L. L. Conrad offered in evidence certified copies of the various proceedings in the district and circuit courts of the United States in the suit referred to in plaintiff's petition, referred to in those exceptions and amended exceptions, and the court refused to admit the
27 said certified copies in evidence on the ground that the matters therein referred to should be tried, and said transcript offered in evidence upon the trial of the case on its merits, they not being proper grounds for exception.

(S'g'd) CHA'S LEAUMONT,
Judge.

2d supplemental answer of Cha's A. Conrad.—Filed March 21st, 1870.

5th district court, parish of Orleans.

E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 350.

The supplemental and amended answer of Charles A. Conrad, one of the defendants herein, filed by leave of court first had and obtained, respectfully shows:

That your respondent and his brother, L. L. Conrad, acquired the lot of ground and improvements thereon, in plaintiff's petition described, from their father, Charles M. Conrad, by act before J. G. Parkerson, recorder of the parish of S't Mary and ex officio notary public, dated June 3d, 1862, and have ever since been, and are now, the true and lawful owners thereof.

Respondent farther avers that if said Burbank, plaintiff herein, ever purchased said property, as alleged in his petition herein, he purchased the same in bad faith, well knowing that it was not the property of C. M. Conrad or of the United States, but was the property of respondent and his said brother.

Respondent further avers that he has suffered great loss and
28 damage from the illegal occupation and detention of said E. W. Burbank from loss of rents and profits which should have been collected and which would have been collected had said property been under the management and control of your respondent or his said brother, and from the injury to and destruction of portions of the building thereon, resulting from plaintiff's mismanagement and want of care of the same and his failure to have made the ordinary repairs need for its preservation, to an amount not less ten thousand dollars, ($10,000.)

Wherefore respondent prays that plaintiff's demand be rejected and that respondent be declared to be the true and lawful owner of one un-

divided half of said property, and be ordered to be placed in full and complete possession of the same at plaintiff's cost; and further that said E. W. Barbank, as a possessor in bad faith, be ordered and condemned to pay to your respondent for one-half of all the fruits and revenues which he may have already received from said property or which he may hereafter receive therefrom; and farther that he be condemned to pay to your respondent the sum of ten thousand dollars, ($10,000,) the amount of loss and damages by his illegal occupation, possession, and detention of respondent's property, as above set forth, and all costs of this suit, and for such other and further equitable relief as the nature of his case may demand.

And as in duty bound he will ever pray, &c., &c.

29 (S'g'd) C. M. CONRAD,
Att'y for Respondent.

Order.

Let this second supplemental answer of Cha's A. Conrad be filed according to law.

New Orleans, March 21st, 1870.

(S'g'd) CHARLES LEAUMONT, *Judge.*

Order, continuance.—Nov. 17th, 1870.

(Extract from minutes.)

E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 350.

This cause is continued by preference.

2d supplemental answer of curator.—Filed Nov. 28th, 1870.

5th district court, parish of Orleans.

E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 350.

The second supplemental answer of Cha's A. Conrad, curator ad hoc, to represent the absent defendant, L. L. Conrad, herein, respectfully represents:

That he adopts on behalf of said L. L. Conrad the 2d supplemental answer filed on his own behalf, with the allegations and the prayer therein contained.

(S'g'd) CHA'S ANGELO CONRAD,
Curator ad hoc.

Order, continuance.—December 1st, 1870.

(Extract from minutes.)

E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 350.

30 On motion, and by consent of counsel, this cause being submitted upon testimony to be taken by consent within a week, the court took the same under advisement.

Motion for appointment of commissioner.—Filed December 5th, 1870.

Fifth district court, parish of Orleans.

E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 350.

On motion of C. M. Conrad and Son, of counsel for defendant, C. A. Conrad and of Cha's A. Conrad, curator ad hoc to the defendant L. L. Conrad, it is ordered that Louis Power, clerk of this court, be appointed commissioner to examine such witnesses on behalf of said defendants as may be brought before him.

Notice to take testimony.—December 5th, 1870.

E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 350.

STATE OF LOUISIANA,
Fifth District Court for the Parish of Orleans:

To Messrs. FELLOWS and MILLS, *Attorneys:*

SIRS: Please to take notice that testimony will be taken in the clerk's office of this court, in the above-entitled case, on Thursday, the 8th day of December, 1870, at 10 o'clock a. m.

(S'g'd) F. A. LUMINAIS,
D'y Clerk.

Sheriff's return.

Received December 5th, 1870, and on the 6th day of Decem-
31 ber, 1870, I served a copy of the within notice to take testimony personally on Mills, of the firm of Fellows & Mills, attorneys; returned same day.

(S'g'd) L. E. GARDETTE,
D'y Sheriff.

Testimony taken in clerk's office, fifth district court.—Filed Dec'r 10th, 1870.

E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 350.

Present: for defendants, Conrad & Son; plaintiff absent and not represented.

Testimony of James Graham.

JAMES GRAHAM, sworn and examined on behalf of the defense.

By M'r Conrad:

Q. You were at one time U. S. marshal for this district, were you not?
A. Yes, sir.
Q. At what time were you appointed and commenced the discharge of your duties?
A. I think it was the 24th June, 1863.
Q. When were you discharged or superseded?

A. On the 1st September, 1864.

Q. Who superseded you?

A. Cuthbert Bullitt.

Q. Do you recollect having had writs or warrants of seizure in your hands, issued by the district court of the U. S. for this district, in cases of libel, for the confiscation of property under the confiscation act of the United States Congress?

A. Yes, sir; I suppose I had; I made seizures.

32 Q. Acts of Congress referring to persons having taken part in the rebellion?

A. I do not remember the nature of the warrants.

Q. But you had such warrants?

Ans. Yes, sir.

Q. Did you seize the properties under those writs?

A. Yes.

Q. Be kind enough to state what you did under those warrants.

A. I cannot recollect; the records will show. I cannot pretend, at this distant day, to recollect any of the details. The proceedings in court will show.

Q. Did you take actual possession of any property?

A. That I cannot state. In some cases I did not, and in some cases I did; but I cannot recollect of anything that I took. The papers in all those cases will show the process or method of seizure.

Q. You don't say on the writs how you seized; you merely say that you seized. Did you receive any rents from tenants?

A. No, sir; I never received a dollar.

Q. What did you do to make the seizure when there were tenants in the property against which the warrants were issued?

A. I cannot recollect the proceedings. It was dismissed from my mind five or six years ago, and I cannot recollect the proceedings in any particular case. I know positively that I never did collect rents; but I think they were collected from those that were liable for the col-

33 lection of rent by the supervising special agent for the Government, M'r Flanders.

Q. Did you ever issue any notices to tenants that the property was seized?

A. That I cannot recollect either. That is a matter of detail, of which I have no recollection whatever at this time.

Q. Do you recollect a warehouse said to belong to or libelled as the property of C. M. Conrad, situated on Julia street, between Magazine and Tchoupitoulas?

A. No, sir; I have no recollection of the kind.

Q. Did you not purchase a good deal of property that had been seized by you under the confiscation laws of Congress?

A. Yes, sir, I did; long after I ceased to be marshal, however.

Q. Do you recollect how you seized the property that you bought?

A. No. Most of the business was done by deputies. I would not like to testify precisely as to transactions involving so many details, and taking place at a period so remote.

Q. Did you ever give any instructions to your deputies as to how to proceed in seizing property?

A. They received the usual instructions that a chief would give to his deputies.

Q. What are those usual instructions?

A. To obey the law.

Q. You gave them no special instructions?

A. I may have done so, but I cannot recollect at this distance of time. Special cases may have called for special instructions; but I do not pretend to call to my memory the details of every-day transactions running through a year.

Q. Do you think that you stated to them what the law was?

A. Very probably I did.

Q. Will you be kind enough to tell me what is the law?

A. I cannot tell that. I have filled other offices since and cannot tell. I studied the law then with a view to the correct performance of my duty.

Q. What do you think the law required you to do in seizing property when there were tenants in it?

A. I cannot answer that at all. I suppose if I was to take Brightly's Digest, and look over the records of the court, I could refresh my memory; but I cannot answer at all now.

Q. If property seized was in the possession of tenants, paying rent, did you turn the tenants out or keep them in?

A. Well, in some cases they were removed, and in others I think they were retained; and the revenues derived from the rent were collected by the supervising special agent, as I supposed—not by me.

Q. Have you got any records showing in what cases rents were paid to the supervisor?

A. No, sir; none at all. I took no account of them.

Q. You never received any rents yourself in any case?

A. No, sir.

Q. Can you specify any case in which you turned a tenant out?

A. No, sir; I cannot do that even. I cannot specify that I ever did turn a tenant out.

35 Q. You cannot state, in other words?

A. No, sir.

Q. Can you state the contrary—that you never did turn a tenant out?

A. No, sir; I cannot.

Q. Why should you pursue a different course in one case than in another?

A. Circumstances alter cases.

Q. What circumstances would cause you to pursue a different course in one case than in another?

A. There may be many circumstances.

Q. Can you state the circumstances that would induce you to turn one tenant out and not another?

A. I cannot call to mind any case at this time where I was instrumental in turning a tenant out, except in cases of a military order, where property that had been abandoned by the owners it was desired by the commanding officer should be occupied by some military officer, as was common at that time. I did not even then order it; I simply acquiesced in the military taking possession.

Q. Did you ever in any case appoint any keeper of property seized?

A. Yes, sir; there were keepers now and then appointed.

Q. Of real estate?

A. Yes, sir.

Q. Did you do it of your own accord or by order of the court?

A. I think everything was done by order of the court.

36 Q. Would you appoint a keeper by order of the court or by yourself?

A. The keeper was appointed by myself. It was done by the express order of the court or the orders of the district attorney.

Q. The district attorney has no right to give such orders.

A. Well, he instituted proceedings.

Q. But he had no right to give such orders.

A. I may be in error in making that statement. I think I had the sanction of the law for everything I did, to the best of my ability.

Q. When you appointed keepers you, of course, charged for them?

A. Yes, sir.

Q. What is the usual charge for appointing a keeper?

A. I think it was two dollars a day in most cases.

Q. And in those cases you would continue to keep it until the property was sold?

A. Where a keeper was in it; yes, sir.

Q. Of course the amount paid to the keeper was taxed in the costs?

A. Yes, sir. I wish to say, explanatory of the business of keeping, that a very large portion of it was rendered gratis. Persons were placed in possession of property with the understanding that they were to charge no fee in consideration of their occupancy of the premises. In most of the cases of seizures of that kind the record will show that with very few instances there was charge for keeping the property seized.

Q. That is when there were voluntary keepers?

37 A. Yes, sir; voluntary keepers, with the understanding that they should charge nothing. I did not charge, in cases of that kind, any keepers' fees. I generally got the service rendered for a dollar or a dollar and a quarter a day, where it was necessary to have a keeper and where I could not make an arrangement to have it kept for nothing.

Q. Where the charge was made it appeared on the docket, did it not?

A. Yes, sir; and you will find, on an examination of the docket, that the cases were infrequent where that fee was charged; and that when it was charged it was generally for a dollar and a quarter or a dollar and a half a day.

Q. These cases of voluntary keeping were by residents here, were they not?

A. Yes, sir.

Q. Are you speaking of real estate or personal property?

A. Where they were both together, in some cases that I recollect, the keepers were appointed, and in most cases without charge.

Q. Can you specify any case in which a keeper was appointed?

A. Armstrong's foundry was one case where I found it necessary to have a keeper, because there were some tools, etc., there.

Q. Specify a case where a person undertook, without pay, to take charge of property?

A. Well, I cannot do that now. I cannot name the properties. The names of the persons I have forgotten; but if I could recollect

38 their names I could not connect them with the property to which they were assigned.

Q. Those were cases of private residents, where parties would voluntarily undertake to take charge of the property?

A. Not always. It was in cases where there was personal property, where it might have been taken off.

Q. Why should a person undertake to take charge of property without compensation?

A. In consideration of being permitted to occupy the premises. That was the consideration. If a man desired a place to sleep in, that he might have lodging and relieve himself from the expense of other lodgings, we would say to him, "If you keep those premises free of all

charges we'll charge you nothing for the use of them, provided you take care of them."

Q. When the commanding officer wanted a property, did he simply direct that it should be occupied, or did he speak to you?

A. In some instances I was so applied to, but it is well, it is useless for me to speak of things that I know nothing about.

Q. I wish you to state a case where the commanding officer applied to you for permission.

A. I believe there were such cases, but I cannot specify them just now.

(S'g'd) JA'S GRAHAM,

Sworn to and subscribed before me this 10th day of December, 1870.

(S'g'd) C. W. COLTON,
Dy Clerk.

39 *Notice to take testimony, on plaintiff thro' counsel.—Filed December 13th, 1870.*

E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 350, State of Louisiana.

STATE OF LOUISIANA,
Fifth District Court for the Parish of Orleans:

NEW ORLEANS, *Dec.* 13, '70.

To FELLOWS AND MILLS,
Att'ys for Pl'ff:

SIRS: Please to take notice that testimony will be taken in the clerk's office of this court in the above-entitled case on Friday, the 16th day of December, 1870, at 10.30 o'clock a. m.

(S'g'd) PHILIP POWER, J'r,
Dy Clerk.

Sheriff's return to above.

Received December 13th, 1870, and on the 14th of same month and year served a copy of the within notice to take testimony personally on J. Q. A. Fellows, of the firm of Fellows and Mills, att'ys. Ret. same day.

(S'g'd) GEO. H. TARDY,
Dy Sheriff.

Testimony for def'ts.—Clerk's office, 5th d'st c't.—Filed December 16th, 1870.

E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 350.

Present, Fellows and Mills, att'ys for plaintiff.
Do. C. M. Conrad & Son, att'ys for def'd'ts.

SIMON HABER, sworn for defendants, says;

I have resided in this city permanently 10 years. I am a merchant here. I was residing here in 1863. In the years 1863, '64
40 '64 the firm of which I am a member, or the firm which

it, occupied a four-story brick store on Camp street, near the corner of Gravier—No. 47 Camp street—then belonging to defendants or their father.

Q. Between what squares?

A. It is between Gravier and Commercial alley, Camp and S't Charles. At the time of those years I was in the habit of paying rent to different parties. I commenced occupying the house in 1863.

Q. To whom did you pay the rent?

A. I find the following receipt in our receipt book, viz:

"NEW ORLEANS, *July 20th*, 1863.

"Received of Forcheimer & Haber four hundred dollars for rent of store No. 47 Camp street, from October 1st, 1862, to August 1, '63, ten months, in obedience to gen'l order 82.
$400.00.
(S'g'd) "J. W. McCLURE,
"*Captain. A. Q. M.*
"p. p. C. BLACK, J'R, *Agent.*"

That receipt is the first payment I made.

Q. What is the next?

A. The next receipt I find the following, viz:

"NEW ORLEANS, *Sept. 4th*, 1863.

"Received of Mess'rs Forcheimer and Haber forty dollars for rent of store, 47 Camp st., for Sept., 1863.
$40.00.
(S'g'd) "J. H. JAMES.
"Per O'MEINE."

Q. What is the next?

A. The next is as follows, viz:

"$40.00.
"OFFICE ASS'T SPECIAL AGENT TREASURY DEPARTMENT,
"SEIZED HOUSES AND FURNITURE,
"*New Orleans, Oct. 5th*, 1863.

41 "Received of Mess'rs Forcheimer and Haben the sum of forty dollars in advance for the month of October, 1863, for rent store No. 47 Camp st.
(S'g'd) "J. H. JONES,
"Per W'M LEWIS, *Col'r.*"

The next one is for $40.00, dated November 10th, 1863, signed by J. H. Jones, per W'm Lewis, col'r.

The next one is for $40.00, dated December 4th, 1863, signed by J. H. Jones, per W'm Lewis, col'r, (form as in former.)

The next one is for $4000, dated January 5th, 1864, signed by J. H. Jones, per W'm Lewis, col'r, in the same form as the preceeding receipts, (numbered No. 187.)

I continued to pay rent to the same parties and in the same form until May 4, '64.

Then I find the following, No. 313:

"SUPERVISING SPECIAL AGENT'S DEPARTMENT,
PROPERTY DIVISION, *New Orleans, June 8th*, 1864.

"*Mess'rs Forcheimer and Haber to Benj. F. Flanders, supervising special agent, D'r:*

"To rent of store No. 47 Camp street, from June 1st, 1864, to June 30, 1864, $50.00, 219. Rec'd payment.
(S'g'd) "W. L. RAYBURN, *Treasurer.*

I find one dated July 1, 1864, same as the preceeding one.
The next receipt I find is as follows:

"NEW ORLEANS, *May* 3, 1865.

"Received of Forcheimer & Haber one hundred dollars for 1 mo's rent of store 47 Camp st. to 30th April past.
"$100.00.
(S'g'd) "RUFUS WAPLES."

42 From the time of the above receipt I continued to pay M'r Waples the rent until I left the store.

All these receipts were for moneys actually paid by me to the parties therein mentioned for the rent of that store.

During the time I was making these payments I do not remember that I was asked or notified to pay rent to any other parties.

Q. Were you notified that this property was seized?

A. I suppose so, because otherwise I would have not paid the rent.

Q. Were you ever notified that there was any other seizure of the property than that by which I paid the rent?

A. I don't remember any. I cannot say that I have in my possession any paper showing such seizure.

(S'g'd) S. HABER.

Sworn to and subscribed before me 16 Dec., 1870.
(S'g'd) PHILIP POWER, J'R, *D'y Clerk.*

(All the foregoing testimony objected by plaintiff's att'y.)

E. F. GARCIA, sworn for def'ts, says:

I was the agent of C. M. Conrad for the collections of rent of their property in this city for many years. I was well acquainted with the property owned by him in this city. I recollect of a warehouse bounded by Julia st., Magazine and Tchoupitoulas and Notre Dame st's,
43 having about 64 feet front on Julia street.

Q. Was there not in the year 1863, and many years previous, and from the year 1863 to 1865, and at present, a large brick warehouse on that lot of ground?

Answer. There was. It almost covers the whole space of the ground; it covers the entire front and the entire depth.

Q. What proportion does the value of the warehouse on the lot bear to the lot itself, in your opinion?

A. Fully two to two and a half the value of the ground. I would estimate the ground at $7,000 and the building $16,000.

Cross-examined:

At the value of real estate in 1863, I place this estimate. I know not the value of that property this day, having not been in that neighborhood since 1863; I think it has since decreased. I represented M'r Conrad, say from 1852 or 1853 to 1863, when I left the city. I was expelled from the city under a military order, being a registered enemy. Up to the time I left the city I was the exclusive agent for C. M. Conrad. No one represented him when I left. M'r Conrad, s'r, and defendants were not present in the city when I left. On my return to the city in 1865 I rendered to M'r C. M. Conrad, s'r, an account and settled with him.

Q. Were you ever the agent of Conrad's son?

Answer. After a sale of property from C. M. Conrad to defendants, L. L. and C. A. Conrad, was made, which act I had recorded in
44 the conveyance office of this city, I took charge of the property

of C. A. and L. L. Conrad. That was under the consent of defendants, I suppose to be. A few days after General Butler's arrival a person came to the bank in which I was employed, which person I do not know, and handed me a deed of sale from C. M. Conrad to his sons, saying, "Conrad sent you this, and says have this recorded at the conveyance office." Then I took charge of the property.

Q. Did you ever render an account to Conrad Sons?

A. No; I remained here only from May, 1862, to May, 1863, and from that time, collected very little on any property, and in my statement to M'r Conrad, s'r, I gave him a detailed statement of what I collected from 1862 to 1863; do not believe I collected anything from September, 1862, on account of a military order requesting agents to report at headquarters, and not wishing to have any difficulty with the military authorities I did not report, because the owners being outside of the Federal lines. This military order was addressed to agents of persons outside of the Federal lines. I have not got a copy of the account which I rendered to M'r Conrad. The book in which I kept the account I handed to M'r C. M. Conrad, who wrote "approved" in it and kept the book. Witness says: I did not pay taxes on the property for 1862, though in 1862 I may have paid taxes for 1861. I have no recollection of what the assessment on the property was. I cannot say that I did return all the tax receipts to M'r Conrad, but I returned some of
45 them to him. When I left I had some in my possession, which I left behind me, and upon my return to the city I could not find them. The building I put that estimate on was a new large one-story brick warehouse, slate roof; it leased in 1860 and 1861 from $2,000 to $2,400 per annum; this was under a lease made in 1860. That amount of rent was not paid after the beginning of the war. A reduction of 30 or 40 per cent. was allowed to the tenants.

Q. During what time was you the exclusive agent of M'r C. M. Conrad for the renting, repairing, paying taxes, and the general management of the property?

Answer. From about 1850 to the beginning of the war, whether M'r Conrad was in the city or not.

Q. Who had charge of the building of the warehouse?

A. It was built under a contract, I think, with a builder and M'r Conrad.

Re-ex. chief.

Q. Were you my agent for any other purpose than leasing my property, collecting the rents, and managing it?

Answer. I had no power of attorney. I was not. I acted under verbal instructions and authority.

(S'g'd) EUG. F. GARCIA.

Sworn to and subscribed before me this 15th December, 1870.

(S'g'd) PHILIP POWER, J'r,
D'y Clerk.

Plaintiff's memoranda of testimony handed to defendants marked "A."

Testimony of A. A. Baudouin—Filed January 2, '71.

46 E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 350.

Testimony taken by consent to be read on the trial of this cause.

M'r Baudoin resides in this city, was chief deputy of Cuthbert Bullitt,

who was the U. S. marshall of this district from 4th September, 1865, to 14th October, 1865, when he was superseded. When, [illegible] on the discharge of his duties as such dy marshall, he found proceedings had been instituted against a good deal of property in the city belonging to various parties. M'r Graham, the predecessor of M'r Bullitt, delivered to witness a list of these cases by their titles. One of divided half of a warehouse on Julia street, which had been libelled as the property of C. M. Conrad, was one of the properties referred to. M'r Graham did not mention what he had done to constitute a seizure of these properties; witness knowing of no seizure having been made of any of said properties, unless the notice or monition in each case constituted a seizure of the property libelled. Witness found no person in charge of any of the properties libelled when the office was turned over to M'r Bullitt, & none were appointed by him, and no other step was taken by M'r Bullitt as a seizure. Most of the properties libelled under the confiscation act were in possession of an officer of the Army or Navy, or of the Treasury Department at the time proceedings were instituted against them, and remained so until they were sold.

(Objected to; objections reserved.)

(S'g'd) A. BAUDOUIN.

47 (S'g'd) C. M. CONRAD & SONS,

(S'g'd) F. & M.

Sworn to and subscribed before this 5th day of December, A. D. 1870.

(S'g'd) W. L. EVANS,
Second Justice of the Peace.

Note of evidence.—Filed Jan. 2, '71.

5th district court.

E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 350.

Counsel for plaintiff offers in evidence the libel of information, &c., the warrant to the marshall, and the marshall's return thereon; the description of real estate; the judgment of condemnation; writ of venditioni exponas, and return of the marshall thereon; the marshal's deed to E. W. Burkbank; also, the monition.

Counsel for defendant offers in evidence the transcript in case No. 7653 of the docket of the U. S. district court; also, Document A, (act of sale,) filed this day.

Bill of exception for defendants.—Filed January 2, '71.

Fifth district court for the parish of Orleans.

E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 350.

Be it known and remembered that on the trial of this cause counsel for plaintiff offered in evidence certain portions of the record of the suit of The United States vs. Ten Lots of Ground, the property of Charles M. Conrad, No. 7653 of the docket of the United
48 States district court for the district of Louisiana, to wit, the libel

of information, admiralty warrant, and return thereon; description of property, venditioni exponas; "extract from notice of sale annexed to marshal's return on venditioni exponas" and marshal's deed of sale, (or copies of said documents,) extracted from that record, and declining to offer the remaining portions of said record.

To the introduction of this evidence defendant's counsel objected on the following grounds, to wit:

1st. That plaintiff could not offer a fractional portion of or incomplete copy of such record, which, if admissible at all, must be offered entire.

2d. That as neither of defendants was a party or privy to the proceedings, or appeared in any manner in the same, that they were res inter alios acta, and not admissible as evidence against defendants.

The court overruled these objections, and admitted the documents or copies offered as evidence, and defendants have taken this bill of exceptions.

(S'g'd) CHA'S LEAUMONT,
Judge.

Bill of exceptions for defendants.—Filed January 2, '71.

5th district court of the parish of Orleans.

E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 350. Bill of exceptions for defendants.—Continued.

Be it known and remembered that on the trial of the cause counsel for defendants offered evidence, to wit, the testimony of the mar-
49 shal, and, als', to prove that the return made by the marshal of the United States that he had seized the property, the subject of this suit, was false and untrue, and that the same had never been seized or in possession of the marshal.

To the introduction of this evidence counsel for plaintiff objected, on the ground that evidence could not be received to contradict the return of the marshal.

The court sustained the objection and excluded the evidence, and counsel for defendants have taken this bill of exceptions.

(S'g'd) CHA'S LEAUMONT,
Judge.

Order.—Case continued for argument.—January 2d, 1871.

(Extract from minutes.)

Present, Hon. Charles Leaumont, judge.

E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 350.

This cause came on this day for trial. Fellows and Mills for plaintiff; C. M. Conrad for def't.

When, after hearing evidence and counsel, said cause was continued to Saturday, 7th, 1871.

Documents offered in evidence by plaintiff, viz: Libel of information, etc.; the warrant to the marshall, and the marshal's return; the de-

scription of real estate; the judgment of condemnation, writ of venditioni exponas, and return of the marshall thereon; the marshall's
50 deed to E. W. Burbank; also the monition.

Documents offered in evidence by defendants, viz: The transcript in case No. 7653 of the docket of the U. S. district court; also document marked "A," (act of sale,) filed this day.

To the honorable Edward H. Durell, judge of the district court of the United States for the eastern district of Louisiana:

The libel of information of Rufus Waples, attorney of the United States of America for the eastern district of Louisiana, who prosecutes for the said United States in this behalf, and being here present in court in his own proper person, in the name and behalf of the said United States of America, against the "estate, property, money, stocks, credits, and effects" hereinafter described, and against all persons intervening for their interest therein, in a case of seizure and forfeiture, alleges, propounds, and declares as follows:

I. That James Graham, esq., marshal of the United States for the said district, under written authority given him by the said attorney, in compliance with instructions issued by the Attorney-General of the United States to the district attorneys thereof, and by virtue of the act of Congress approved on the 17th day of July, in the year of our Lord 1862, entitled "An act to suppress insurrection, to punish treason
51 and rebellion, to seize and confiscate the property of rebels, and for other purposes," heretofore, that is to say, on the twenty-ninth day of July, in the year of our Lord one thousand eight hundred and sixty-three, seized as forfeited to the United States, at New Orleans, within said district, and within the jurisdiction of this court, two lots of ground, situate in the suburb St Mary, between St Joseph and Delord streets, designated by the Nos. 7 & 8 on a plan by C. F. Zimple, 8th April, 1835, deposited in the office of C. W. Christy. Said lots adjoin each other, and measure each—No. 7 measures 24 feet front on Camp street by 116 feet 10 inches and 5 lines deep, between parallel lines; lot No. 8 has a like and equal front on Camp street, by 127 feet 10 inches deep, between parallel lines, English measure; together with the buildings and improvements thereon.

A certain lot of ground, with the four-story brick store thereon, situate in the first district of said city, in the square bounded by Camp, Gravier, St Charles, and Poydras streets, designated by the No. 47 on a plan by T. Thompson, 7th May, 1842, deposited in the office of H. B. Cenas, which lot of ground measures 23 feet front on Camp street, by a depth of 90 feet, between parallel lines.

A certain lot of ground situated on the batture in front of the first district, in the square bounded by New Levee, Lafayette, Fulton, & Girod streets, designated by the No. 11 on a plan known as the
52 plan of J. A. Beard, duly certified by Hugh Grant, then surveyor of said district, dated 12th January, 1852, deposited in the office of H. B. Cenas. Said lot measures, according to said plan, 24 feet 2 inches and 7 lines front on New Levee street, and 24 feet 3 inches and 3 lines on said Fulton street, by a depth of 119 feet 3 inches and 2 lines on the line which divides it from lot No. 12, American measure; together with all the buildings and improvements thereon.

The one undivided half of a cetain lot of ground, situate in the first district of said city, in the square bounded by Julia, Magazine, Notre Dame, and Tchoupitaulas streets, measuring 65 feet front on Julia street, by 151 feet deep on the side towards Magazine street, 153 feet 9 inches

in depth on the other side, adjoining the property of Peters, Miller, and others, 35 feet 7 inches in width on the rear, adjoining the fire-engine co. of No. 6. The whole in conformity to a plan drawn by Jos. Pilié, surveyor, and annexed to an act passed before C. Pollock, on the 12th May, 1836.

All and singular the lot of ground, together with the three-story brick dwelling-house, the three-story brick buildings and convenient stable erected thereon, situate on the western side of Carondelet street, between Hevia and Poydras streets, in the suburb St Mary, designated as lot No. 3 on a plan by C. F. Zimple, surveyor, dated 10th December, 1833, deposited as plan No. 1 in the book of plans of J. Mossy, notary. Said lot measures 23 feet 8¼ inches front on Carondelet street, by
23 feet 9 inches and 2 lines, more or less, in the rear, by a depth
53 of 147 feet 11 inches, more or less, on the boundary-line of lot No. 2, and of one hundred and forty-nine ten and a half inches, more or less, on the boundary-line of lot No. 4. The place between the stable and yard is reserved by said act as an alley, to be appropriated forever to the common use of this and the five adjoining tenements designated on said plan.

Four certain lots of ground, situate in the faubourg Livaudais, parish of Jefferson, in the square bounded by Prytania, First, Second, and Nayades streets, designated by the Nos. 1, 2, 3, & 4, on a plan by Knell & Werner, on the 10th May, 1848, deposited in the office of H. B. Cenas, notary. Lots Nos. 1, 2, & 3 measures each 28 feet 1 inch 3 lines front on Prytania street, by 120 feet in depth, between parallel lines, lot No. 1 forming the corner of First and Prytania. Lot No. 4 measures 28 feet 1 inche and 2 lines front on Prytania street, by 120 feet deep, between parallel lines, American measure.

II. That the person who owns the said property, Charles M. Conrad, of New Orleans, L'a, is and was on the 17th day of July, 1862, and previously thereto had been, the owner thereof.

III. That certain States, forming a part of the territory and constituting a part of the United States of America, and specifically enumerated by the President of the United States in his proclamation, duly issued and bearing date the first day of July, A. D. eighteen hundred and sixty-two, are now engaged, and were at the time said proclamation was issued engaged, and have since continued to be engaged, in armed rebellion against the lawful authority of the United States.

54 IV. That by the act of the Congress of the United States, approved the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," provision was made for the seizure and confiscation of the property of persons engaged in armed rebellion against the lawful authority of the United States, and of other persons, as therein set forth.

V. That the said Charles M. Conrad, the person whose property is herein seized, subsequently to said seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, did act as an officer of the army or navy of the rebels in arms against the Government of the United States, or as a member of congress, or as a judge of a court, or as a cabinet officer, or as a foreign minister, or as a commissioner, or as a consul of the so-called Confederate States of America, or that, while owning property in a loyal State or Territory of the United States, or *of* the District of Columbia, he did give aid and comfort to the rebellion aginst the United States, and did assist such rebellion.

VI. That the said Charles M. Conrad, the person who owns the said property, subsequently to said seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, did act as governor of a State, or as a member of a convention or legislature, or as a judge of a court of one of the so-called Confederate States of America,
55 to wit, the State of Louisiana, or did hold an office or agency under the government of the so-called Confederate States of America, or under one of the States thereof, said office being national, State, or municipal in its name and character, which said office or agency he accepted after the date of the pretended ordinance of secession of the State of Louisiana; that he did take an oath of allegiance to, or to support the constitution of, the so-called Confederate States.

VII. That the said Charles M. Conrad, the person who owns the said property, subsequently to said seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, within a State or Territory of the United States, was engaged in armed rebellion against the Government of the United States, and did not within sixty days after public warning and proclamation duly given and made by the President of the United States, on the twenty-fifth day of July, in the year of our Lord eighteen hundred and sixty-two, cease to aid, countenance, and abet such rebellion, and return to his allegiance to the United States.

VIII. That the said Charles M. Conrad, person who owns the said property, subsequently to said seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, within a State or Territory of the United States, was engaged in aiding and abetting an armed rebellion against the Government of the United States,
56 and did not within sixty days after public warning and proclamation duly given and made on the twenty-fifth day of July, in the year of our Lord eighteen hundred and sixty-two, by the President of the United States, cease to aid, countenance, and abet such rebellion and return to his allegiance to the United States.

IX. That by reason of the premises, the property herein described, and all the right, title, interest, and estate of the said person or persons whose property is described herein, became and was forfeited to the United States, and ought to be condemned to their use.

Wherefore the said attorney, in the name and behalf of the United States of America, prays that process of monition may issue against the said property and the owner and owners thereof, and against all persons interested or claiming an interest therein, warning them at some early day, to be therein named, to appear and answer this libel of information; and that order of publication may be made in the usual form, and that the court may grant such further and other relief as to law and justice may appertain and as this court is competent to give in the premises, and that, after due proceedings had, the said property may be condemned and forfeited to the United States of America, and he prays for general relief.

(Signed) RUFUS WAPLES,
U. S. District Attorney for the Eastern District of Louisiana.

57 *Warrant to marshal.*

The President of the United States of America to the marshal of the eastern district of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded forthwith to seize and into your possession take the property, a full description whereof is hereto annexed as a

part of this writ, together with all the improvements, buildings, privileges, and other hereditaments thereunto belonging, as well as all the right, title, and interest of Charles M. Conrad therein, now libelled by the United States for the causes set forth in the libel now pending in district court of the United States for the eastern district of Louisiana; that you do cite and admonish the owner or owners and all and every other person or persons having, or pretending to have, any right, title, or interest in or to the same to be and appear before a district court of the United States for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the service hereof, to show cause, if any they have or can, why the said property, &c., should not be condemned and sold agreeably to the prayer of libellant, and how you have executed this warrant, that you make return according to law.

Witness the honorable Edward H. Durell, judge of the said court, at New Orleans, this 8th of August, 1863, and the 88th year of the Independence of the United States.

58 [L. S.] (Signed) ALFRED SHAW, *Clerk*,
By K. LOEW, *D'y Clerk*.

Marshal's return.

Received August 8th, 1863, and, in obedience to the within warrant, seized and took into my possession the within-described property, posted copies of the libel of information, this warrant, and the order of the judge on the door of the court-house, and published monition in the Era, a daily newspaper printed and published in the city of New Orleans, on the 11th, 15th, 19th, 22, 25, 29 August, 1863. Returnable 31st August, 1863.

(Signed) JA'S GRAHAM,
U. S. Marshal.

Describing property.

Description of real estate libelled in suit No. 7653.

Two lots of ground situated in suburb S't Mary, between S't Joseph and Delord streets, designated by the Nos. 7 & 8 on a plan by E. F. Zimpel, 8th April, 1835, deposited in the office of W. C. Christy. Said lots adjoin each other, and measure each: No. 7 measures 24 feet front on Camp street, by 116 feet 10 inches 5 lines deep, between parallel lines; lot No. 8 has a like and equal front on Camp street, by 127 feet 10 inches deep, between parallel lines, English measure; together with the buildings and improvements thereon.

A certain lot of ground, with the four-story brick store thereon, situated in the first district of said city, in the square bounded by Camp, Gravier, S't Charles, and Poydras streets, designated by the No.
59 47 on a plan by T. Thomson, 7th May, 1842, deposited in the office of H. B. Cenas; which lot of ground measures 23 feet front on Camp street, by a depth of 90 feet, between parallel lines.

A certain lot of ground situated on the batture in front of the first district, in the square bounded by New Levee, La Fayette, Fulton, & Girod streets, designated by the No. 11 on a plan known as the plan of J. A. Beard, duly certified by Hugh Grant, then surveyor of said district, dated 12th January, 1852, deposited in the office of H. B. Cenas. Said lot measures, according to said plan, 24 feet 2 inches and 7 lines front on New Levee street, and 24 feet 3 inches 3 lines on said Fulton

street, by a depth of 119 feet 3 inches and [illegible]
divides it from lot No. 12, American measure, [illegible]
buildings and improvements thereon.

The one undivided half of a certain lot of ground situated [illegible] district of said city, in the square bounded by [illegible] Dame, and Tchoupitoulas streets, measuring 25 feet [illegible] by 151 feet deep on the side towards Magazine street, [illegible] in depth on the other side, adjoining the property of [illegible] others, 35 feet 7 inches in width on the rear, adjoining the [illegible] co. of No. 6. The whole in conformity to a plan drawn by [illegible] surveyor, and annexed to an act passed before C. Pedesclaux, [illegible] May, 1836.

All and singular the lot of ground, together with the [illegible]
60 brick dwelling-house, the three-story brick buildings and [illegible] venient stable erected thereon, situated on the [illegible] Carondelet street, between Hevia and Poydras streets, [illegible] S't Mary, designated as lot No. 3 on a plan by C. F. Zimpel, [illegible] dated 10th December, 1833, deposited as plan No. 1 in the [illegible] of J. Mossy, notary. Said lot measures 23 feet 8½ inches front on [illegible] delet street by 23 feet 9 inches and 2 lines, more or less, in the [illegible] a depth of 147 feet 11 inches, more or less, on the boundary line of [illegible] No. 2, and of 149 feet 10½ inches, more or less, on the boundary line of lot No. four. The place between the stable and yard is reserved by [illegible] said act as an alley to be appropriated forever to the common use of this and the five adjoining tenements designated on said plan.

Four certain lots of ground situated in the faubourg Livaudais, parish of Jefferson, in the square bounded by Prytania, First, Second, and Nayades streets, designated by the Nos. 1, 2, 3, & 4 on a plan by [illegible] & Werner, on the 10th May, 1848, deposited in the office of H. B. [illegible] nas, notary. Lots Nos. 1, 2, 3 measures each 28 feet 1 inch 3 lines front on Prytania street, by 120 feet in depth, between parallel lines, No. one forming the corner of First and Prytania streets. Lots No. four measures 28 feet 1 inch 2 lines front on Prytania street, by 120 feet deep, between parallel lines, American measure.

True copy. Aug. 8th, 1863.

(Signed) K. LOEW,
Dy Clerk.

61 *Condemnation.*

UNITED STATES *vs.* TEN LOTS OF GROUND, THE PROPERTY OF Charles M. Conrad.	No. 7633. Judgment of condemnation.

This cause came up for trial, district attorney for libellants. And the monition issued in this case having been heretofore returned, the usual proclamation having been made, the default of all persons entered, and the law and the evidence duly considered, it is thereupon, on motion of R. Waples, esq., U. S. attorney, ordered, sentenced, and decreed by this court now here, and his honor the district judge, by virtue of the power and authority in him vested, doth hereby order, sentence, and decree, that the ten lots of ground, with the buildings and improvements thereon, the property of Charles M. Conrad, a full description whereof is contained in the libel on file, be, and the same are hereby, condemned as forfeited to the United States. And it is further ordered and decreed that the clerk of this court issue a writ of venditioni exponas to the

marshal of the district, returnable on 15th March, 1865, and that upon the return thereof the proceeds be distributed according to law, the legal rights of the intervenor to the proceeds being reserved for further action.

Judgment rendered February 3rd, 1865.
Judgment signed February 8th, 1865.
(Signed) E. H. DURELL, *Judge.*

62 *Venditioni exponas.—Filed 10th Febr'y*, 1865.

United States district court, eastern district of Louisiana.

The President of the United States of America to the marshal of the eastern district of Louisiana, or either of his deputies, greeting:

Whereas at a district court of the United States, holden at New Orleans, for and within said district, on the third day of February, A. D. 1865, ten lots of ground, with all the buildings and improvements thereon, the property of Charles M. Conrad, fully described in the libel of information on file, were, after proclamation and due proceedings had, decreed forfeit, and ordered to be sold at public auction: These are, therefore, to command you to sell to the highest bidder at public auction, at Merchants' & Auctione'rs' Exchange, 18 Royal st., within said district, on the 22nd day of March, 1865, at 12 o'clock m., the said property, first giving thirty days' notice at least of the time and place of sale by advertising the same in the True Delta, one of the newspapers printed at New Orleans, and by proclamation in the usual form on the day of sale, the money arising from the sale to be paid into the registry of the said court, to be disposed of as the law in this case directs; and make due return hereof with your doings herein.

Witness the honorable Edward H. Durell, at New Orleans, this 10th day of February, A. D. 1865, and 89 year of the Independence of the United States of America.

(Signed) W. S. BENEDICT,
D'y Clerk.

63 *Marshal's return.*

UNITED STATES OF AMERICA,
District of Louisiana:

NEW ORLEANS, *March 30th*, 1865.

Pursuant to this precept, I have caused the property within named to be sold by public auction, and to the highest bidder, at Merchants' & Auctioneers' Exchange, 18 Royal st., on the day, hour, and place therein directed, having given thirty days' previous notice of the time, place, and manner of the sale in the True Delta, one of the newspapers printed in the city of New Orleans, and by the crier on the day of sale, and at such sale the purchasers were as under:

Rufus Waples.	2 lots on Camp street, bet. S't Joseph & Delord st's	$650 00
Do.	1 lot on Camp street, & 4-story brick store	5,200 00
Do.	1 lot fronting on New Levee & Fulton streets; improvements	1,300 00
E. W. Burbank.	Undivided half of lot, front on Julia street; improvements	1,075 00

Rufus Waples.	1 lot on Carondelet, betw'n Hevia & Poydras st's, & 3-story brick house	1,550 00
I. H. Stevenson.	4 lots on Prytania st., betw'n First & Second st's	450 00
	Total amount of sales	$10,225 00

Reference is made to the certificate of the recorder of mortgages of the parish of Orleans hereto annexed.

64 Whereby the sales amounted to ten thousand two hundred and twenty-five dollars cents, which I pay over to Charles Claiborne, esq., the clerk of the court aforesaid, to be disposed of as the court directs.

Attest:

A. BAUDOUIN,
Dep'y Marshal.

Received from Cuthbert Bullitt, United States marshall, ten thousand two hundred and twenty-five dollars cents, being (as he saith) the proceeds of the foregoing sale, the moneys to be disposed of as the court directs, and for which I have signed duplicate receipts.

(Signed) CHARLES CLAIBORNE, *Clerk.*

NEW ORLEANS, *March 30th*, 1865.

Extract.

(Extract from notice of sale annexed to marshal's return on writ of venditioni exponas.)

The one undivided half of a certain lot of ground situate in the first district of said city, in the square bounded by Julia, Magazine, Notre Dame, and Tchoupitoulas streets, measuring 65 feet front on Julia street by 151 feet deep on the side towards Magazine street, 153 feet 9 inches in depth on the other side, adjoining the property of Peters, Miller, and others, 55 feet 7 inches in width in the rear, adjoining the fire-engine co. No. 6, the whole in conformity to a plan drawn by Jos. Pilié, surveyor, and annexed to an act passed before C. Pollock on the 12th May, 1836.

Deed.

Deed of sale, sales-book B, page 68.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, City of New Orleans:

65 Whereas I, Cuthbert Bullitt, marshal of the United States for the eastern district of Louisiana, under and by virtue of a writ of venditioni exponas to me directed by the honorable the district court of the United States for the district aforesaid, in the suit entitled "The United States versus Ten Lots of Ground, the property of Charles M. Conrad," No. 7653 of the docket of said court, did expose at public sale according to law, and after all the previous legal requisites had been fulfilled and complied with, and after having given full thirty days' notice of said sale in the True Delta, one of the daily newspapers printed and published on the 22nd March, 1865, the following-described property, viz: The one undivided half of a certain lot of ground situate in the

first district of the city of New Orleans, in the square bounded by Julia, Magazine, Notre Dame, and Tchoupitoulas streets, measuring 65 feet front on Julia street by 131 feet deep on the side towards Magazine street, 153 feet 9 inches in depth on the other side, adjoining the property of Peters, Miller, & others, 55 feet 7 inches in width in the rear adjoining the first-engine company No. 6, the whole in conformity to a plan drawn by Jos. Pilié, surveyor, and annexed to an act passed before C. Pollock, notary, on the 12th May, 1836, on Wednesday, the 22nd day of March, 1865, at the hour of 12 o'clock m., at the Merchants' Exchange, No. 18 Royal street, when, after making due proclamation of said sale, and duly crying the said undivided lot and appurtenances, the same were adjudicated to Edward W. Burbank, he being the last and highest bidder thereon, for the price and sum of one thousand and
66 seventy-five dollars (1,075.00) in cash at the time of adjudication, which said sum I hereby acknowledge to have received in ready current money of the United States of America.

And it appears from a duly-certified copy from the records in the office of the recorder of mortgages for the parish of Orleans, which certificate is annexed to the venditioni exponas, under the authority of which the above-described property has been sold, that there are none other than the following mortgages recorded against the above-described property, viz:

1° 2°. B. P. 1, fo's 370 & 391. The privilege in favor of the board of commissioners of the 1st & 2nd draining-districts on the property within their respective districts. 3°. B 51, fo. 299. The one by him granted in favor of E. A. Cannon, judge of the 2d district court, as per act before H. B. Cenas, notary, dated 8th and recorded 10th April, 1847, affecting the property above described to secure: 1st. The re-imbursement of the portion accruing to his minor children, Charles M. A. & Lawrence Lewis Conrad, out of the price at which the real estate belonging to the community between him and his deceased wife, which was adjudicated to him, amounting to $7,062.50; 2°. To secure the faithful performance of his duties as tutor of said minors.

B. 66, fo. 448. The one he granted as tutor, &c., in favor of J. N. Lee, judge of the 2d district court, per act before W'm Christy, notary, dated the 31st May, and recorded the 1st June, 1855, to secure the rights of his said minor children in the succession of their deceased mother: amounting to $7,062.50, on the property therein-above described.

67 Now, therefore, know all men by these presents that I, the U. S. marshal aforesaid, in consideration of the premises and by virtue of the laws in such case made and provided, and under the authority of the acts of Congress of 6th August, 1861; 17th July, 1862; and the 3d March, 1863, in relation to confiscation, do hereby sell, transfer, assign, and set over unto the said Edward W. Burbank, as aforesaid, his heirs, administrators, executors, and assigns, all and singular the above-described property, with all the buildings and improvements thereon, rights, ways, privileges, hereditaments, and appurtenances to the same belonging and in anywise appertaining, to have and to hold the above-described property, with all the buildings and improvements thereon, rights, ways, &c., &c., as aforesaid, unto the said Edward W. Burbank, his heirs and assigns as aforesaid, to his and their proper use, benefit, and behoof forever.

In testimony whereof I grant these presents under my signature as U. S. marshal aforesaid, in the said city of New Orleans, on this 29th day of March, in the year of our Lord one thousand eight hundred and

sixty-five, and of the Independence of the United States of America the eighty-ninth.

(Signed) CUTHBERT BULLITT,
U. S. Marshal.

Executed in presence of—
(Signed) A. BOUDRIANG.
J. J. PREIS.

[$1.50 U. S. rev. stamp, cancelled.]

A true copy of the original, and recorded March 31st, 1868.
(Signed) W. S. BENEDICT,
D'y Clerk.

68 *Clerk's certificate.*

U. S. district court, district of Louisiana.

I certify that the foregoing are true copies of the originals on file and of record in the case of The United States vs. 10 Lots of Ground, the property of C. M. Conrad, No. 7653 of the docket of said court, with the exception of the venditioni exponas, of which document I have, at the request of counsel for Burbank, transcribed only such part as relates to the property purchased by him.

In faith whereof I grant these presents under my hand and the seal of our court at New Orleans this 30th December, 1870.

[SEAL.] K. LOEW, *D'y Clerk.*

DOCUMENT A.

Deed of sale, C. M. Conrad to C. A. & L. L. Conrad, June 3d, 1870.—Filed and offered in evidence January 2, '70, by defendants.

E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 350.

STATE OF LOUISIANA,
Parish of St Mary:

Before me, James G. Parkerson, recorder and ex-officio notary public, duly commissioned and sworn, in and for the parish of St Mary, in presence of the witnesses hereinafter named and undersigned, personally came and appeared honorable Charles M. Conrad, a resident of
69 the city of New Orleans, State of Louisiana, who declared that he, and in consideration of the sum and price of thirteen thousand [illegible] dollars, cash, in hand paid, "receipt whereof is hereby acknowledged and good acquittance and discharge given therefor," he did and does by these presents bargain, sell, assign, convey, set over, and deliver unto his sons, Charles Angelo Conrad and Lawrence Lewis Conrad, each, one undivided half interest and ownership therein, likewise residents of the city aforesaid, the said Charles Angelo Conrad being here present and accepting for himself and for his said brother, as his general agent, the following property, to wit:

"A certain lot or parcel of ground, lying and being situate in the city of New Orleans, State of Louisiana, fronting on Julia street of said city, between Magazine and Tchoupitoulas streets, and having about seventy-two feet front, more or less, on said Julia street, by about one hundred and seventy feet in depth, but narrowing towards the rear, where it has

a width of only about thirty-eight or forty feet, together with the brick warehouse thereon, and all rights of ways and privileges thereunto belonging, and being the same acquired by the present vendor by purchase of one undivided half from William McCanby and the other undivided half at a subsequent period from his brother, F. B. Conrad: To have and to hold the said conveyed property unto the said purchasers, their heirs and assigns, in full property forever, with full and general warranty of title, free from all liens, mortgages, or encumbrances
70 whatever, and with full subrogation to all the rights, titles of warranty, and all other rights held into the said property by the present vendor."

The parties agree to dispense with the certificate required by article 3328 of the Civil Code of this State, and exonerate me, said recorder, from all liability on account of the non-production of the same.

Thus done and passed at my office in the parish of S't Mary, on this third day of June, eighteen hundred and sixty-two, in presence of Thomas N. Harris and Thomas T. Foster, both competent witnesses, who have signed these presents, with the said appearers, and me, said recorder, after due reading.

Original signed,

C. M. CONRAD.
CHA'S ANGELO CONRAD.
THO'S N. HARRIS.
THO'S J. FOSTER.
J. G. PARKERSON, *Recorder.*

STATE OF LOUISIANA,
Recorder's Office, Parish of S't Mary:

I hereby certify the foregoing to be a true and correct copy of the original on file and of record in book O of conveyances, page No. 541, No. 10816 of my office, inscribed therein on the third day of June, A. D. 1862.

In evidence whereof witness my official seal and signature this 26th day of February, A. D. 1870.

[SEAL.] (S'g'd) J. G. PARKERSON, *Recorder.*

[Int. rev. stamp, 5 cts.]

Registered in conveyance office in book 99, fo. 228, New Orleans, December 8th, 1870.

(S'g'd) C. B. FISH, *D'y.*

71 *Agreement for evidence in this case.—Filed January 6th*, 1871.

5th district court, parish of Orleans.

E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 350. Agreement for evidence in this case.

It is admitted in this case that both C. A. and L. L. Conrad left the city of New Orleans shortly before its capture by the United States forces in April, 1863, and did not return to it before the month of July, 1865.

(S'g'd) C. M. CONRAD & SONS.,
Att'ys for C. A. Conrad.

(S'g'd) CHARLES ANGELO CONRAD,
Curator ad hoc.

The above statement is admitted in evidence.

(S'g'd) FELLOWS AND MILLS.

Order, case submitted.—January 7th, 1871.

(Extract from minutes.)

E. W. BURBANK,
vs.
C. A. AND L. L. CONRAD. } No. 350.

This cause came on this day for argument.
Fellows and Mills for plaintiff.
C. M. Conrad for defendants.
When, after hearing counsel, the case being submitted without argument or briefs by both parties, the court took the same under advisement.

Judgment.—January 12th, 1871.

5th district court.

E. W. BURBANK,
vs.
C. A. AND L. L. *Burbank.* } No. 350.

In this case, submitted to the court for determination, the court
72 considering the law and evidence to be in favor of plaintiff,
It is ordered, adjudged, and decreed that there be judgment in favor of plaintiff, E. W. Burbank, and against defendants, Charles A. Conrad and L. L. Conrad, decreeing a partition by licitation of the property hereinafter described in the proportion of one-half to plaintiff and of one-half to said Charles A. Conrad and L. L. Conrad jointly, to wit: "A certain lot of ground situated in the first district of the city of New Orleans, in the square bounded by Julia, Magazine, Notre Dame, and Tchoupitoulas streets, measuring sixty-five feet front on Julia street by one hundred and fifty-one feet deep on the side towards Magazine street; one hundred and fifty-eight feet nine inches in depth on the other side, adjoining the property of Peter Mellone and others; fifty-five feet seven inches in width in the rear, adjoining the first engine company No. 6, the whole in conformity to a plan drawn by Jos. Pilié, surveyor, and annexed to an act passed before C. Pollock, notary, on the 12th May, 1836." It is further ordered, adjudged, and decreed that said property be sold by the sheriff of this parish for cash, after all due notices and advertisements, for purpose of this partition, and that thereafter the parties be referred to Octave Morel, esq., notary public, of this city, to complete said partition, and that defendants pay costs of suit.
Judgment rendered January 12th, 1871.
Signed January 21st, 1871.
(S'g'd) CHA'S LEAUMONT,
Judge.

73 *Rule for new trial.—Filed January 17th, 1871.*

Fifth district court, parish of Orleans.

E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 350.

On motion of C. M. Conrad & Son, of counsel for Cha's A. Conrad, and of C. A. Conrad, curator ad hoc to L. L. Conrad, it is ordered that

plaintiff show cause, on Friday, the 20th day of January, 1871, why a new trial should not be granted herein on the following grounds, to wit: The judgment rendered herein is contrary to the law and the evidence.

Sheriff's return.

Received, January 17th, 1871, and on the 18th day of same month and year served copy of the within rule on E. W. Burbank, plaintiff herein, through Fellows and Mills, att'ys, by personal service on J. Q. A. Fellows, att'y.

(S'g'd) PAULIO EXENICIOS,
D'y Sheriff.

Rule for new trial dismissed.—Jan. 20th, 1871.

(Extract from minutes.)

E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 350.

74 The rule herein taken for a new trial came on this day for hearing, when, by consent of counsel, said rule being submitted, the court seeing no reason to change its opinion as heretofore expressed, it is ordered that said rule be dismissed and a new trial refused.

Motion for a suspensive appeal.—Filed January 25th, 1871.

Fifth district court, parish of Orleans.

E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 350.

On motion of C. M. Conrad and Son, of counsel for Cha's A. Conrad, and of C. A. Conrad, curator ad hoc for L. L. Conrad, defendants herein, and on representing to the court that they believe that there is error to their prejudice in the judgment rendered against them herein, it is ordered that defendants be allowed a suspensive appeal from said judgment upon their giving bond in the sum of twelve hundred dollars, ($1,200.00,) conditioned according to law, said appeal to be returnable on 3d Monday of (20th) February, 1871.

Bond of appeal.—Filed January 25th, 1871.

75 Know all men by these presents that we, Charles A. Conrad and L. Lewis Conrad as principals, and Charles M. Conrad as surety, are held and firmly bound unto Louis Power, clerk of the fifth district court for the parish of Orleans, his executors, administrators, and assigns, in the sum of twelve hundred dollars, ($1,200.00,) for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated in the city of New Orleans on this twenty-fourth (24th) day of January, in the year of our Lord one thousand eight hundred and seventy-one.

Whereas the above-bounden Charles A. Conrad and L. Lewis Con-

rad this day moved for a suspensive appeal from a final judgment rendered against them in the suit of E. W. Burbank vs. C. A. and L. L. Conrad, in the fifth district court for the parish of Orleans, on the twelfth (12) day of January, 1871:

Now the condition of the above obligation is such, that the above bound C. A. Conrad and L. L. Conrad shall prosecute their suspensive appeal, and shall satisfy whatever judgment may be rendered against them, or that the same shall be satisfied by the proceeds of the sale of their estate, real or personal, if they be cast in the appeal; otherwise that the said Charles M. Conrad, their surety, shall be liable in their place.

(S'g'd) CHA'S ANGELO CONRAD. [L. S.]
" C. M. CONRAD. [L. S.]

Signed, sealed, and delivered in presence of—

76 No. 7653.

Record No. 7653 of the docket of the United States district court, district of Louisiana, entitled United States vs. Ten Lots of Ground, the property of Cha's M. Conrad, offered in evidence by defendants.—Filed January 2d, 1871.

Libel.

UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF CHA'S M. Conrad. } No. 7653.

Filed August 7th, 1863.
(Signed) K. LOEW, *Dep. Clerk.*

To the honorable Edward H. Durell, judge of the district court of th United States for the eastern district of Louisiana.

The libel of information of Rufus Waples, attorney of the United States of America for the eastern district of Louisiana, who prosecutes for the said United States in this behalf, and being here present in court, in his own proper person, in the name and behalf of the said United States of America, against the "estate, property, money, stocks, credits, and effects," hereinafter described, and against all persons inter-
77 vening for their interest therein, in a case of seizure and forfeiture, alleges, propounds, and declares as follows:

I. That James Graham, esqr., marshal of the United States for the said district, under written authority given him by the said attorney in compliance with instructions issued by the Attorney-General of the United States to the district attorneys thereof, and by virtue of the act of Congress approved on the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," heretofore, that is to say, on the twenty-ninth day of July, in the year of our Lord one thousand eight hundred and sixty-three, seized as forfeited to the United States, at New Orleans, within said district, and within the jurisdiction of this court, two lots of ground situate in suburb St Mary, between St Joseph & Delord streets, designated by the Nos. 7 & 8 on a plan by C. F. Zimpel, 8th April, 1835, deposited in the office of W. C.

Christy. Said lots adjoin each other and measure each—No. 7 measures 24 feet front on Camp street by 116 feet 10 inches and 5 lines deep between parallel lines; lot No. 8 has a like and equal front on Camp street, by 127 feet 10 inches deep between parallel lines, English measures; together with the buildings and improvements thereon.

A certain lot of ground with a four-story brick store thereon, situation the first district of said city, in the square bounded by Camp, Gravier, S't Charles, and Poydras street, designated by the No.
78 47 on a plan by T. Thompson, 7th May, 1842, deposited in the office of H. B. Cenas, which lot of ground measures 23 feet front on Camp street, by a depth of 90 feet between parallel lines.

A certain lot of ground situate on the batture in front of the first district, in the square bounded by New Levee, Lafayette, Fulton, & Girod streets, designated by the No. 11 on a plan known as the plan of I. A. Beard, duly certified by Hugh Grant, then surveyor of said district, dated 12th January, 1852, deposited in the office of H. B. Cenas; said lot measures, according to said plan, 4 feet 2 inches and 7 lines front on New Levee street, and feet 3 inches and 3 lines on said Fulton street, by a depth of 119 feet 3 inches and 2 lines on the line which divides it from lot No. 12, American measure, together with all the buildings and improvements thereon.

The one undivided half of a certain lot of ground situate in the first district of said city, in the square bounded by Julia, Magazine, Notre Dame, and Tchoupitoulas streets, measuring 65 feet front on Julia street by 151 feet deep on the side towards Magazine street, 153 feet 9 inches in depth on the other side adjoining the property of Peters, Millers, and others, 35 feet 7 inches in width on the rear adjoining the fire-engine co. of No. 6. The whole in conformity to a plan drawn by Jos. Pilié, surveyor, and annexed to an act passed before C. Pollock, on the 12th May, 1836.

All and singular the lot of ground, together with the three-story brick dwelling house, the three-story brick buildings and convenient stable erected thereon, situate on the western side of Carondelet street, between
79 Hevia and Poydras streets, in the suburb S't Mary, designated as lot No. 3 on a plan by C. F. Zimpel, surveyor, dated 10th December, 1833, deposited as plan No. 1 in the book of plans of J. Mossy, notary. Said lot measures 23 feet 8½ inches front on Carondelet street, by 23 feet 9 inches and 2 lines, more or less, in the rear, by a depth of 147 feet 11 inches, more or less, on the boundary-line of lot No. 2, and of 149 feet 10½ inches, more or less, on the boundary-line of lot No. 4. The place between the stable and yard is reserved by the said act as an alley to be appropriated forever to the common use of this and the five adjoining tenements designated on said plan.

Four certain lots of ground, situate in the foubourg Livandais, parish of Jefferson, in the square bounded by Prytania, First, Second, and Nayades streets, designated by the Nos. 1, 2, 3, and 4, on a plan by Knell & Werner, on the 10th May, 1848, deposited in the office of H. B. Cenas, notary. Lots Nos. 1, 2, and 3 measure each 28 feet 1 inch 3 lines front on Prytania street, by 120 feet in depth between parallel lines, lot No. 1 forming the corner of First and Prytania. Lot No. 4 measures 28 feet 1 inch and 2 lines front on Prytania street, by 120 feet deep between parallel lines, American measure.

II. That the person who owns the property, Charles M. Conrad, of New Orleans, L'a, is and was, on the 17th day of July, 1862, and previously thereto had been, the owner thereof.

III. That certain States forming a part of the territory and constitut-

ing a part of the United States of America, and specifically enumerated by the President of the United States in his proclamation, duly issued and bearing date the first day of July, A. D. eighteen hundred
80 and sixty-two, are now engaged, and were at the time said proclamation was issued engaged, and have since continued to be engaged, in armed rebellion against the lawful authority of the United States.

IV. That by the act of Congress of the United States approved the 17th day of July, in the year of our Lord 1862, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," provision was made for the seizure and confiscation of the property of persons engaged in armed rebellion against the lawful authority of the United States and of other persons as therein set forth.

V. That the said Charles M. Conrad, the person whose property is herein seized, subsequently to the said seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, did act as an officer of the army or navy of the rebels in arms against the Government of the United States, or as a member of congress, or as a judge of a court, or as a cabinet officer, or as a foreign minister, or as a commissioner, or as a consul of the so-called Confederate States of America; or that, while owning property in a loyal State or Territory of the United States, or of the District of Columbia, he did give aid and comfort to the rebellion against the United States, and did assist such rebellion.

VI. That the said Charles M. Conrad, the person who owns the said property, subsequently to the said seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, did act as governor of a State, or as a member of a convention or legislature,
81 or as judge of a court of one of the so-called Confederate States of America, to wit, the State of Louisiana; or did hold an office in the so-called Confederate States of America after having held an office of trust or profit in the United States; or did hold an office or agency under the government of the so-called Confederate States of America or under one of the States thereof, said office being national, State, or municipal in its name and character, which said office or agency he accepted after the date of the pretended ordinance of secession of the State of Louisiana; that he did take an oath of allegiance to, or to support the constitution of, the so-called Confederate States.

VII. That the said Charles M. Conrad, the person who owns the said property, subsequently to the said seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, within a State or Territory of the United States, was engaged in armed rebellion against the Government of the United States, and did not within sixty days after public warning and proclamation duly given and made by the President of the United States on the twenty-fifth day of July, in the year one thousand eight hundred and sixty-two, cease to aid, countenance, and abet such rebellion, and return to his allegiance to the United States.

VIII. That the said Charles M. Conrad, the person who owns the said property, subsequently to the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, within a State
82 or Territory of the United States, was engaged in aiding and abetting an armed rebellion against the Government of the United States, and did not within sixty days after public warning and proclamation duly given and made on the twenty-fifth day of July, in

the year of our Lord one thousand eight hundred and sixty-two, by the President of the United States, cease to aid, countenance, and abet such rebellion, and to return his allegiance to the United States.

IX. That by reason of the premises the property herein described, and all the right, title, interest, and estate of the said person or persons whose property is described herein, became and was forfeited to the United States, and ought to be condemned to their use.

Wherefore the said attorney, in the name and behalf of the United States of America, prays that process of monition may issue against the said property and the owner and owners thereof, and against all persons interested or claiming an interest therein, warning them at some early day, to be named therein, to appear and answer this libel of information, and that an order of publication may be made in the usual form, and that the court may grant such further and other relief as to law and justice may appertain, and as this court is competent to give in the premises, and that after due proceedings had the said property may be condemned and forfeited to the United States of America, and he prays for general relief.

(Signed) RUFUS WAPLES,
U. S. District Attorney for the Eastern District of Louisiana.

83 *Order of publication.—Issued August 8th*, 1863.

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF Charles M. Conrad. } No. 7653.

Whereas two lots of ground situate in suburb S't Mary, between S't Joseph and Delord streets, designated by the Nos. 7 and 8 on a plan by C. F. Zimpel, 8th April, 1835, deposited in the office of W. Christy. Said lots adjoin each other, and measure each—No. 7 measures 24 feet front on Camp street, by 116 feet 10 inches and 5 lines deep, between parallel lines; lot No. 8 has a like and equal front on Camp street, by 127 feet 10 inches deep, between parallel lines, English measure; together with the buildings and improvements thereon.

A certain lot of ground with the four-story brick store thereon, situate in the first district of said city, in the square bounded by Camp, Gravier, S't Charles, and Poydras streets, designated by the No. 47, on a plan by T. Thompson, 7th May, 1842, deposited in the office of H. B. Cenas, which lot of ground measures 23 feet front on Camp street, by a depth of 90 feet, between parallel lines.

A certain lot of ground situate on the batture in front of the first district, in the square bounded by New Levee, Lafayette, Fulton, and Girod streets, designated by the No. 11 on a plan known as the plan of J. A. Beard, duly certified by Hugh Grant, then surveyor of said district, dated 12th January, 1852, deposited in the office of H. B. Cenas.

84 Said lot measures, according to said plan, 24 feet 2 inches and 7 lines front on New Levee st., and 24 feet 3 inches and 3 lines on said Fulton street, by a depth of 119 feet 3 inches and 2 lines on the line which divides it from lot No. 12, American measure; together with all the buildings and improvements thereon.

The one undivided half of a certain lot of ground situate in the first

district of said city, in the square bounded by Julia, Magazine, Notre Dame, and Tchoupitoulas streets, measuring 40 feet front on Julia street, by 151 feet deep on the side towards Magazine street, 153 feet 9 inches in depth on the other side adjoining the property of Peters, Miller, and others, 35 feet 7 inches in width, in the rear adjoining the fire-engine co. of No. 6. The whole in conformity to a plan drawn by Jos. Pilié, surveyor, and annexed to an act passed before C. Pollock on the 12th May, 1836.

All and singular the lot of ground, together with the three-story brick dwelling-house, the three-story brick buildings and convenient stable erected thereon, situate on the western side of Carondelet street, between Hevia and Poydras streets, in the suburb St Mary, designated as lot No. 3 on a plan by C. F. Zimpel, surveyor, dated 10th December, 1838, deposited as plan No. 1 in the book of plans of J. Mossy, notary. Said lot measures 23 feet 8½ inches front on Carondelet street, by 23 feet 9 inches and 2 lines, more or less, in the rear, by a depth of 147 feet 11 inches, more or less, on the boundary-line of lot No. 2, and 149 feet 10½ inches, more or less, on the boundary-line of lot No. 4. The place between the stable and yard is reserved by the said act as an alley to
85 be appropriated forever to the common use of this and the five adjoining tenements on said plan.

Four certain lots of ground situate in the faub'urg Livaudais, parish of Jefferson, in the square bounded by Prytania, First, Second, and Nayades streets, designated by the Nos. 1, 2, 3, and 4 on a plan by Knell and Werner, on the 10th of May, 1848, deposited in the office of H. B. Cenas, notary. Lots Nos. 1, 2, and 3 measure each 28 feet 1 inch 3 lines front on Prytania street, by 120 feet in depth, between parallel lines, lot No. 1 forming the corner of First and Prytania streets. Lot No. 4 measures 28 feet 1 inch 2 lines front on Prytania street, by 120 feet deep, between parallel lines, American measure; together with all the improvements, buildings, rights, privileges, appurtenances, and other hereditaments to the same belonging or in any wise appertaining; and all the rights, title, and interest of the said Charles M. Conrad therein has been seized by the marshal of the United States for the eastern district of Louisiana, by virtue of an act of Congress, approved on the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes;" and whereas the United States attorney for the eastern district of Louisiana did, on the seventeenth day of August, A. D.
86 1863, file a libel of information in this court, praying the condemnation of said property and real estate, under the act aforesaid, and that process of monition issue against the owner and owners of said property and real estate and all persons interested or claiming an interest therein, warning them at some early day to appear and answer said information:

It is, therefore, on this eighth day of August, in the year of our Lord eighteen hundred and sixty-three, ordered that notice be given to the owner and owners of said property and real estate and all persons interested or claiming an interest therein, to appear and answer this information on the thirty-first day of August, and show cause, if any they have, why said property and real estate and the right, title, and interest therein of the said Charles M. Conrad should not be condemned and sold according to law, and that notice be given by posting a copy of this order upon the front door of the court-house of the district, and by publica-

tion in the Era newspaper twice a week previous to said 31st day of August, A. D. 1863, the first publication to be on or before 11th inst.
New Orleans, Aug. 8th, 1863.
(Signed) E. H. DURELL,
U. S. Judge.

Warrant.—Filed Aug. 29, 1863.

Warrant cont'd:
The President of the United States of America, to the marshal of the eastern district of Louisiana, or to his lawful deputy, greeting:

87 You are hereby commanded forthwith to seize, and into your possession take, the property, a full description whereof is hereto annexed as a part of this writ, together with all the improvements, buildings, privileges, and other hereditaments thereunto belonging, as well as all the right, title, and interest of Charles M. Conrad therein, now libelled by the United States for the causes set forth in the libel now pending in the district court of the United States for the eastern district of Eastern Louisiana; that you do cite and admonish the owner or owners and all and every other person or persons having or pretending to have, any right, title, or interest in or to the same, to be and appear before a district court of the United States for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the service hereof, to shew cause, if any they have or can, why the said property, &c., should not be condemned and sold agreeably to the prayer of the libellant; and how you have executed this warrant, that you make return according to law.
Witness the honorable Edward H. Durell, judge of the said court, at New Orleans, this 8th day of August, 1863, and the 88 year of the Independence of the United States.
(Signed) ALFRED SHAW, *Clerk,*
(Signed) By K. LOEW, *D'y Clerk.*

Marshal's return.

Received August 8th, 1863, and in obedience to the within warrant seized and took into my possession the within-described property,
88 posted copies of the libel of information, this warrant, and the order of the judge on the door of the court-house, and published monition in the Era, a daily newspaper printed and published in this city of New Orleans, on the 11, 15, 19, 22, 25, 29 August, 1863. Returnable 31st August, 1863.
(Signed) JA'S GRAHAM,
U. S. Marshal.

Description of property.—Filed Aug. 11, '63.

Description of property and real estate annexed to warrant.—Description of real estate libelled in suit No. 7653.

Two lots of ground, situated in suburb S't Mary, between S't Joseph and Delord streets, designated by the Nos. 7 and 8 on a plan by C. F. Zimpel, 8th April, 1835, deposited in the office of W. C. Christy. Said lots adjoin each other, and measure each—No. 7 measures 24 feet front

on Camp street by 116 feet 10 inches 5 lines deep, between parallel lines; lot No. 8 has a like and equal front on Camp street by 127 feet 10 inches deep, between parallel lines, English measure; together with the buildings and improvements thereon.

A certain lot of ground, with the four-story brick store thereon, situate in the first district of said city, in the square bounded by Camp, Gravier, S't Charles, and Poydras streets, designated by the No. 47 on a plan by T. Thompson, 7th May, 1842, deposited in the office of H. B. Cenas, which lot of ground measures 23 feet front on Camp street by a depth of 90 feet, between parallel lines.

89 A certain lot of ground situated on the batture in front of the first district, in the square bounded by New Levee, La Fayette, Fulton, and Girod streets, designated by the No. 11 on a plan known as the plan of J. A. Beard, duly certified by Hugh Grant, then surveyor of said district, dated 12th January, 1852, deposited in the office of H. B. Cenas. Said lot measures, according to said plan, 24 feet 2 inches and 7 lines front on New Levee street, and 24 feet 3 inches 3 lines on said Fulton street, by a depth of 119 feet 3 inches and 2 lines on the line which divides it from lot No. 12, American measure; together with all the buildings and improvements thereon.

The one undivided half of a certain lot of ground situated in the first district of said city, in the square bounded by Julia, Magazine, Notre Dame, and Tchoupitoulas streets, measuring 65 feet front on Julia street by 151 feet deep on the side towards Magazine street, 153 feet 9 inches in depth on the other side, adjoining the property of Peters, Miller, and others, 35 feet 7 inches in width on the rear adjoining the fire-engine on of No. 6; the whole in conformity to a plan drawn by Jos. Pilie, surveyor, and annexed to an act passed before C. Pollock, on the 12th May, 1836.

All and singular the lot of ground, together with the three-story brick dwelling-house, the three-story brick buildings, and convenient stable erected thereon, situated on the western side of Carondelet street, between Hevia and Poydras streets, in the suburb S't Mary, designated as lot No. 3 on a plan by C. F. Zimpel, surveyor, dated Decem-

90 ber, 1833, deposited as plan No. 1, in the book of plans of J. Mossy, notary. Said lot measures 23 feet 8½ inches front of Carondelet street by 23 feet 9 inches and 2 lines, more or less, in the rear, by a depth of 147 feet 11 inches, more or less, on the boundary-line of lot No. 2, and of 149 feet 10½ inches, more or less, on the boundary-line of lot No. four. The place between the stable and yards is reserved by the said act as an alley, to be appropriated forever to the common use of this and the five adjoining tenements designated on said plan.

Four certain lots of ground situate in the faubourg Livandais, parish of Jefferson, in the square bounded by Prytania, First, Second, and Nayades streets, designated by the Nos. 1, 2, 3, and four on a plan by Knell and Warner, on the 10th May, 1848, deposited in the office of H. B. Cenas, notary. Lots Nos. 1, 2, and 3 measure each 28 feet 1 inch 3 *feet* front on Prytania street by 120 feet in depth, between parallel lines, lot No. one forming the corner of First and Prytania streets. Lot No. 4 measurers 28 feet 1 inch and 2 lines front on Prytania street by 120 feet deep, between parallel lines, American measure.

Aug. 8th, 1863.

True copy.

(Signed) K. LOEW, *D'y Clerk.*

Marshal's monition.

UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF Charles M. Conrad. } No. 7653.

91 In the United States district court *court*, eastern district of Louisiana.

In obedience to a warrant issued in this court, to me directed, in the above-entitled suit, I have seized and taken in my possession two lots of ground situate in suburb S't Mary, between S't Joseph and Delord streets, designated by the Nos. 7 and 8 on a plan by C. F. Zimpel, 8th April, 1835, deposited in the office of W. Christy. Said lots adjoin each other, and measure each—No. 7 measures 24 feet front on Camp street by 116 feet 10 inches and 5 lines deep, between parallel lines; lot No. 8 has a like and equal front on Camp street by 127 feet 10 inches deep between parallel lines, English measure.

A certain lot of ground situate in the first district of said city, in the square bounded by Camp, Gravier, S't Charles, and Poydras streets, designated by the No. 47 on a plan by T. Thompson, 7th May, 1842, deposited in the office of H. B. Cenas, which lot of ground measures 23 feet front on Camp street by a depth of 90 feet, between parallel lines.

A certain lot of ground situate on the batture in front of the first district, in the square bounded by New Levee, La Fayette, Fulton, and Girod streets, designated by the No. 11 on a plan known as the plan of J. A. Beard, duly certified by Hugh Grant, then surveyor of said district, dated 12th January, 1852, deposited in the office of H. B. Cenas. Said lot measures, according to said plan, 24 feet 2 inches and 7 lines front on New Levee street, and 24 feet 3 inches and 3 lines
92 on said Fulton street, by a depth 119 feet 3 inches and 2 lines on the line which divides it from lot No. 12, American measure.

The one undivided half of a certain lot of ground situated in the first district of said city, in the square bounded by Julia, Magazine, Notre Dame, and Tchoupitoulas streets, measuring 65 feet front on Julia street by 151 feet deep on the side towards Magazine street, 153 feet 9 inches in depth on the other side, adjoining the property of Peters, Miller, and others, 35 feet 7 inches in width on the rear, adjoining the fire-engine co. No. 6; the whole in conformity to a plan drawn by Tho's Pilié, surveyor, and annexed to an act passed before C. Pollock on the 12th May, 1836.

All and singular the lot of ground situate on the western side of Carondelet street, between Hevia and Poydras streets, in the suburb S't Mary, designated as lot No. 3 on a plan by C. F. Zimpel, surveyor, dated 10th December, 1833, deposited as plan No. 1 in the book of plans, by T. Mossy, notary. Said lot measures 23 feet 8½ inches front on Carondelet street by 23 feet 9 inches and 2 lines, more or less, in the rear, by a depth of 147 feet 11 inches, more or less, on the boundary-line of lot No. 2, and 149 feet 10½ inches, more or less, on the boundary-line of lot No. 4. The place between the stable and yard is reserved by the said act as an alley, to be appropriated forever to the common use of this and the five adjoining tenements designated on said plan.

Four certain lots of ground situate in the faubourg Livandais, in the parish of Jefferson, in the square bounded by Prytania, First,
93 Second, Nayades streets, designated by the Nos. 1, 2, 3, and

4 on a plan by Knell and Warner, on the 16th May, 1843, ... ited in the office of H. B. Canas, notary. Lots Nos. 1, 2, and 3 ... each 28 feet 1 inch 3 lines front on Prytania street by 120 feet ... between parallel lines, lot No. 1 forming the corner of First and Pry... nia streets; lot No. 4 measures 28 feet 1 inch and 2 lines front on Pry... tania street by 120 feet deep, between parallel lines, American measure, together with all the improvements, buildings, rights, privileges, appur... tenances, and other hereditaments to the same belonging or in anywise appertaining, and all the right, title, and interest of the said Charles M. Conrad therein, now libelled by the United States for the reasons assigned and set forth in the libel in the above-entitled suit, now pending in the said district court.

And I do hereby cite and admonish the owner or owners thereof, and all persons having or pretending to have any right, title, or interest in or to the same, to be and appear at a district court of the United States for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the date hereof, to show cause, if any they have or can, why the said above-described property should not be condemned and forfeited to the United States agreeably to the prayer of the libellants.

United States marshal's office, New Orleans, 11th day of August, 1863.

JAMES GRAHAM,
U. S. Marshal.

Aug. 11, 15, 19, 22, 25, 29.

94 *Default.*

(Extract from minutes, 1st September, 1863.)

UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF Charles M. Conrad. } No. 7653.

The delay allowed by law having expired herein, and no claim or defence having been filed after due monition and proclamation, on motion of the dist. att'y, it is ordered that all persons interested in the property seized herein be pronounced in contumacy and default, and the libel adjudged and taken pro confesso.

Notice to take testimony.—Issued May 11th, 1864.

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF Charles M. Conrad. } No. 7653.

TO CHA'S CLAIBORNE:

You are hereby notified that testimony will be taken in the above-entitled cause on Friday, the 13th day of May, 1864, at the clerk's office of circuit court, before you as U. S. com'r, at 5 p. m.

New Orleans, May 11th, 1864.

[SEAL.] (Signed) K. LOEW,
Dy Clerk.

Marshal's return.

Rec'd May 11, 1864, and same day served copy of the within notice on Charles Claiborne personally at his office.

95 (Signed) J. CHRISTIE,
Dep'ty U. S. M'sh'l.

Order taxing fee dist. attorney.

(Extract from minutes, 28th June, 1864.)

UNITED STATES
vs.
TEN LOTS OF GROUND, PROPERTY OF CHARLES M. Conrad. } No. 7653.

Ordered that $1,520 be taxed as the fees due Rufus Waples, U. S. dist. att'y, for services rendered in this case up to date, June 27th, 1864.
This order was revoked on 7th April, 1865.
(Signed) K. L., *D'y Clerk.*

Intervention of State of Louisiana.—Filed August 31st, 1864.

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
TEN LOTS OF GROUND, PROPERTY OF CHARLES M. Conrad. } No. 7653.

To the honorable E. H. DURELL,
Judge of the District Court of the United States in and for the Eastern District of Louisiana:

The intervention of B. L. Lynch, attorney-general of the State of Louisiana, and in his said capacity representing said State, alleges and articulately propounds as follows:

That the defendant herein is indebted unto the said State of Louisiana, herein intervenor, in the sum of six hundred and eight dollars and seventy-five cents, for this, to wit:

That in the year 1861 an assessment was duly and legally made by the State assessor of the State of Louisiana of all the property
96 within the limits of the parish of Orleans; that the said assessment-roll was duly adopted after the delay required by law, and shows that the State tax of the said defendant amount to the sum of three hundred and four dollars and eighty cents for said year; that in the year 1862 an assessment was made in the manner and form as required by law, by the said State assessor, of all the property contained within the limits of said parish, and that the defendant herein stands assessed upon said assessment-roll of the year 1862 for the sum of three hundred and three dollars and ninety-five cents, for property owned by him in the city of New Orleans during the latter year, which two sums hereinabove referred to amount to six hundred and eight dollars and seventy-five cents; all of which will more fully and at large appear from a certified copy of each of said assessment-rolls, and other evidence to be produced upon the trial of this cause.

That, under and by virtue of an act of Congress approved July 16th, 1862, the proceedings in this case must conform as nearly as may be to

proceedings in admiralty or revenue cases, and that, according to admiralty proceedings and jurisdiction, ordinary or general creditors may claim the property or proceeds of property brought into registry, and to be disposed of or distributed by the court.

That, under and by virtue of the laws of the State of Louisiana, the property seized and taken into possession of the marshal of the
97 United States was at the time of such seizure and taking into possession pledged to the State of Louisiana in payment of her claims as one of his creditors.

That, under and by virtue of the laws of the State of Louisiana in such cases made and provided, intervenor has a lien and privilege upon the property seized by the marshal aforesaid, which lien or privilege is of a higher rank than any mortgage or other incumbrance whatever that the said property, at the time of such seizure and previous thereto, was held and owned by the said Cha's M. Conrad, subject to and encumbered with a lien and privilege for the payment of intervenor's claim, amounting, as aforesaid, to six hundred and eight dollars and seventy-five cents.

That at the time of filing libel or information, and at the time of the seizure aforesaid by the marshal, intervenor was entitled, by the laws of Louisiana, to enforce her claim and demand specifically against the property seized and taken as aforesaid into the hands of the United States marshal.

That all and singular the premises are true and within the jurisdiction of this court.

Whereupon intervenor prays that by an order of this honorable court she may be authorized to appear and prosecute this intervention; that due process of law, according to the course and practice of this court in like cases, may issue, and that Rufus Waples, esq., district attorney of the United States for said district, may be cited to appear and answer all and singular the matters aforesaid; and that this honor-
98 able court would be pleased to declare, pronounce, and decree that the claim and demand of intervenor against the said Charles M. Conrad, amounting to the sum of six hundred and eight dollars and seventy-five cents, as hereinabove set forth, be allowed, the judgment for said claim be rendered in favor of intervenor, and against the said Cha's M. Conrad, that the lien and privilege aforesaid upon the lot of ground seized by the marshal herein be recognized and enforced for the payment of intervenor's aforesaid claim, with her costs in this behalf expended.

That in the event of this court proceeding to render judgment of condemnation against said lot, then that your honor, notwithstanding such condemnation, and before awarding the aforesaid lot of ground or property, or the proceeds arising therefrom, to the United States, or to any inferior or inferiors, person or persons whatsoever, will first provide for the payment by such lot, or its proceeds, if the same is sold at suit of Government, of intervenor's claim and demand aforesaid, and that intervenor may have such other and further relief in the premises as in law and justice she may be entitled to receive, with her costs, &c.

(Signed) B. L. LYNCH.

Sworn to and subscribed before me this 31 day of August, in the year of our Lord 1864.

(Signed) K. LOEW,
Dep. Clk.

(Signed) B. L. LYNCH,
Attorney-General, for Intervenor.

By order of court of 6th September, 1864, the marshal's costs
99 in this case were taxed as follows, viz:

Fees	$32 00
Disburs'ments	60 24
	$92 24

Testimony for libellants.—Filed Dec'ber 26th, 1864.

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
TEN LOTS OF GROUND, PROPERTY OF CHARLES M. Conrad.
} No. 7653. May 18th, 1864, 5 o'clock, p. m.

Before Charles Claiborne, U. S. commissioner.

R. R. Barrow, for libellant, sworn, deposes:
I reside in Louisiana, in the parish of Terre Bonne. I have known M'r C. M. Conrad for many years. I understood he was a candidate for the Confederate congress and that he was elected. I know it as I know that Lincoln was elected President of the United States. I have never heard of his resigning. The election for the Confederate congress took place after secession. From general report I know that he is a member of the Confederate congress at this time.

(Signed) R. R. BARROW.

Sworn to and subscribed before me this 18th day of May, 1864.
[SEAL.] (Signed) CHA'S CLAIBORNE,
U. S. Com'r.

Notice to U. S. commissioner.—Issued January 18th, 1864.

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
PROPERTY OF C. M. CONRAD.
} No. 7653.

To CHA'S CLAIBORNE,
U. S. Com'r:

100 You are hereby notified that testimony will be taken before you in the above-entitled cause on Thursday, the 19th day of January, 1865, at the clerk's office, at 12 o'clock m., on behalf of libellant.

New Orleans, Jan. 18th, 1865.
[SEAL.] (Signed) W. S. BENEDICT, *D'y Clk.*

Marshal's return.

Received Jan. 18th, 1865, and on the same day, month, and year served a copy of the within notice on Cha's Claiborne, esq., U. S. com'r, in person.

New Orleans, January 19th, 1865.
(Signed) M. EGAN,
D'y U. S. Marshal.

Testimony for libellants.—Filed January 19, 1865.

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
PROPERTY OF C. M. CONRAD. } No. 7653.

Testimony taken in presence of district attorney, N. O., January 19th, 1865, 12 m.

Robert Dalton, being duly sworn for libellant, deposes and says:

I know M'r Cha's M. Conrad. I last saw him two years ago next Mardi, in Richmond, Virginia. I think he was then a member of the rebel congress. He was formerly a resident of this State. I saw him on the streets of Richmond, at the corner of 7th and Main st's, at a hotel there. I may have seen him since that time, but don't remember. I was introduced to him as a member of the Confederate congress by M'r Burke or Col. Walton. He did not deny his being a member of
101 the rebel congress. In this contest M'r Conrad is on the rebel side. I suppose M'r Conrad is doing all he can for his cause. He is, by common report, a very prominent man in the Conf. States gov't. He is looked upon in that light by everybody. I solicited his influence for me as a member of congress; I had business with him as such.

(Signed) ROBERT DALTON.

Sworn to and subscribed before me this 19th January, 1865.

(Signed) CHA'S CLAIBORNE,
U. S. Com'r.

Harmon Doane, being duly sworn for libellant, deposes and says:

I am slightly acquainted with C. M. Conrad. I think I knew him here slightly some years ago. He has been a politician for a long time; that is his character. I think he was at one time a member of Congress of the U. S., and also Secretary of War of the U. S. He was reported to be a member of congress of the so-called Confederate States; public report said so; this was one year ago. He is a man of considerable ability by reputation. I saw him once in Richmond, met him casually. I was in neither house of congress while they were in session. I should presume, by common report, that he was taking a prominent part in this contest, as a member of the rebel congress. From his character I should judge he would be a prominent man in anything he did undertake. I had no conversation with him, nothing more than a passing salutation of the day. It was about one year ago I saw him in Richmond. I had no business whatever with him.

102 (Signed) HARMON DOANE.

Sworn to and subscribed before me this 19th January, 1865.

[SEAL.] (Signed) CHA'S CLAIBORNE,
U. S. Commissioner.

Notice to U. S. commissioner.—Issued Jan'y 20th, 1865.

United States district court, eastern district of Louisiana. No. 7653.

UNITED STATES
vs.
PROPERTY OF C. M. CONRAD. } No. 7653.

To CHA'S CLAIBORNE,
U. S. Commissioner:

You are hereby notified that testimony will be taken before you in

the above-entitled cause on Monday, the 23d day of January, 1865, at the clerk's office, at 12 o'clock m., on behalf of libellant.

New Orleans, Jan'y 29th, 1865.

[SEAL.] (Signed) W. S. BENEDICT,
D'y Clerk.

To CHA'S CLAIBORNE, *U. S. Com'r.*

Marshal's return.

Rec'd Jan'y 29th, 1865, and the same day, month, and year served a copy of the within notice on C. Clairborne, esq., U. S. com'r, personally.

January 21st 1865.

(Signed) G. HOLLANDER,
Dep. U. S. Marshal.

Testimony for libellants.—Filed January 25th, 1865, and offered in evidence by U. S., March 30th, 1865.

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
PROPERTY OF C. M. CONRAD. } No. 7653.

Testimony taken in presence of district attorney, New Orleans, Jan. 25th, 1856.

103 Alexander White, being duly sworn, deposes and says:

I know M'r C. M. Conrad; knew him here and also knew him in the Confederacy. He was a member of the Confederate congress. He has been in the Confederate congress since July 17th, 1862, and I believe he is still there. He was formerly in the Congress of the United States.

(Signed) ALEX. WHITE.

Sworn to and subscribed before me this 25th January, 1865.

(Signed) CHA'S CLAIBORNE,
U. S. Commissioner.

Joseph Howell, being duly sworn, deposes and says:

I have heard M'r C. M. Conrad was, and is, a member of the Confederate congress, and believe him to be. I saw him when I was quite young; don't recollect ever having seen him since. I think M'r Conrad was also a member of the Congress of the United States.

(Signed) J. D. HOWELL.

Sworn to and subscribed before me this 25th January, 1865.

(Signed) CHA'S CLAIBORNE,
U. S. Com'r.

Order fixing cause for trial.

(Extract from minutes. Jan'y 30th, 1865.)

UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF Cha's M. Conrad. } No. 7653.

On motion of R. Waples, esq., U. S. attorney, ordered that this case be assigned for trial on Friday the 3d February, 1865, at 11 a. m., and that the parties interested be notified thereof.

104 *Notice of trial.—Issued Jan'y 30th, 1865.*

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
TEN LOTS OF GROUND, PROPERTY OF C. M. Conrad. } No. 7653.

To the att'y-gen'l, B. L. LYNCH, esq.:

You are hereby notified that the above cause has been assigned for trial on Friday, the 3d day of February, 1865, at 10 a. m.

By order of court.

[SEAL.] (Signed) K. LOEW, *D'y Clerk.*

NEW ORLEANS, *January 30th*, 1865.

Marshal's return.

Received January 30th, 1865. and on the same day, month, and year served a copy of the within notice on B. L. Lynch, esq., personally.

NEW ORLEANS, Jan'y 31st, 1865.

(Signed) M. EGAN,
D'y U. S. Marshal.

Note of evidence.—Filed February 3d, 1865.

UNITED STATES
vs.
TEN LOTS OF GROUND, PROPERTY OF C. M. Conrad. } No. 7653.

Libellants offered in evidence the warrant, monition, and marshal's return, and the evidence of John A. Newell and J. E. Wallace, taken before U. S. Com. Claiborne, 19th April, '64; that of R. R. Barrow, taken 18th May, '64; that of Rob' Dalton and Harmon Doane, taken 19th Jan'y, '65, and that of Alex. White and J'ph Howell, taken 25 Jan'y, '65, all before the same commissioner.

Testimony for libellants.—Filed May 5th, 1864, and offered in evidence by U. S. February 3d, 1865.

105 United States district court, eastern district of Louisiana.

UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF C. M. Conrad. } No. 7653. April 19th, 1864—5 o'clock p. m.

Before Charles Claiborne, U. S. com'r.

John A. Newell, a witness on the part of libellant, duly sworn, deposes:

I reside in Rapides Parish. I arrived in the city on the 7th instant. I was in Rapids Parish at the time of the last rebel congressional election. Charles M. Conrad was a candidate. I saw tickets with his name on them. I knew of no other candidate for congress. I understood M'r Conrad to be elected. I saw it afterwards in print in the Western Democrat, a paper published at Alexandria. I was generally understood there that C. M. Conrad had received the majority of the votes cast.

I have the same sort of knowledge of the election of C. M. Conrad to the rebel congress that I have that Abraham Lincoln was elected to the presidency in the last presidential election. I have seen the name of C. M. Conrad mentioned in the reports of the proceedings of the rebel congress at Richmond.

(Signed) JOHN A. NEWELL.

Sworn to and subscribed before me this 19th April, 1864.

[SEAL.] (Signed) CHA'S CLAIBORNE,
U. S. Commissioner.

UNITED STATES
vs.
THE PROPERTY OF C. M. CONRAD. } No. 7653.

J. E. Wallace, sworn.

106 J. E. Wallace, a witness on the part of libellants, duly sworn.

I am a member of the bar of Louisiana; formerly resided in De Soto Parish; now a resident of the city of New Orleans. I know that Charles M. Conrad was elected to the congress of the Confederate States. I travelled with him between Atlanta, Georgia, and Jackson, Mississippi, at which time he stated to me that he was on his return from the rebel congress. This was in April, 1862. He introduced me to several other members of congress in the cars with us. I know by common report that he was re-elected to the rebel congress. I know of my own knowledge that an election took place for members to the rebel congress, and to the best of my knowledge he was re-elected. This was about a year ago, some time in 1863. I was then at Avery's Island, in the State of Louisiana.

(Signed) J. E. WALLACE.

Sworn to and subscribed before me this 19th April, 1864.

[SEAL.] (Signed) CHA'S CLAIBORNE,
U. S. Com'r.

Documents referred to in note of evidence.

Warrrant ..... page 11
M. return ..... " 12
" monition ..... " 17
Testimony of R. R. Barrow ..... page 30
" " Rob't Dalton ..... " 32
" " Harmon Doane ..... " 33
" " Alex. White ..... " 36
" " Jph Howell ..... " 37

Hearing and decree of condemnation.

UNITED STATES
vs.
10 LOTS OF GROUND, THE PROPERTY OF CHARLES M. Conrad. } No. 7653.

107 This cause came up for trial; district attorney for libellants.

And the monition issued in this case having been heretofore returned, the usual proclamation having been made, the default of all persons entered, and the law and the evidence duly considered, it is

thereupon, on motion of R. Waples, esq., U. S. attorney, ordered, sentenced, and decreed by the court now here, and his honor the district judge, by virtue of the power and authority in him vested, doth hereby order, sentence, and decree that the ten lots of ground with the buildings and improvements thereon, the property of Charles M. Conrad, a full description whereof is contained in the libel on file, be, and the same are hereby, condemned as forfeited to the United States.

And it is further ordered and decreed that the clerk of this court issue a writ of venditioni exponas to the marshal of the district, returnable on 15th March, 1865, and that upon the return thereof the proceeds be distributed according to law, the legal rights of the intervenor to the proceeds being reserved for further action.

Judgment rendered February 3d, 1865.

Judgment signed February 8th, 1865.

(Signed) E. H. DURELL, *Judge.*

Venditioni exponas.

United States district court, district of Louisiana.

UNITED STATES
vs.
TEN LOTS OF GROUND, PROPERTY OF CHARLES M. CONRAD. } No. 7653.

The President of the United States of America to the marshal of the district of Louisiana, or either of his deputies, greeting:

108 Whereas at a district court of the United States holden at New Orleans, for and within said district, on the third day of February, A. D. 1865, ten lots of ground with all the buildings and improvements thereon, the property of Charles M. Conrad, fully described in the libel of information on file, were after proclamation and due proceedings had. *were after due proceedings* decreed forfeit and ordered to be sold at public auction: These are therefore to command you to sell to the highest bidder, at public auction, at Merchants' and Auctioneers' , 18 Royal st., within said district, on the 22d day of March, 1865, at 12 o'clock m., the said property, first giving thirty days' notice, at least, of the time and place of sale, by advertising the same in the True Delta, one of the newspapers printed at New Orleans, and by proclamation in the usual form on the day of sale; the money arising from the sale to be paid into the registry of the said court, to be disposed of as the law in this case directs. And make due return hereof, with your doings herein.

Witness the honorable Edward H. Durell, at New Orleans, this 10th day of February, A. D. 1865, and 89th year of the Independence of the United States of America.

[SEAL.] (Signed) W. S. BENEDICT,
Dy Clerk.

Marshal's return to venditioni exponas.

UNITED STATES OF AMERICA,
District of Louisiana:

NEW ORLEANS, *March* 30, 1865.

Pursuant to this precept, I have caused the property within named to

be sold by public auction, and to the highest bidder, at Merchants' and Auctioneers' Exchange, 18 Royal st., on the day, hour, and place
109 therein directed, having given thirty days' previous notice of the time, place, and manner of the sale in the True Delta, one of the newspapers printed in the city of New Orleans, and by the crier on the day of sale, and at such sale the purchasers were as under:

Rufus Waples, 2 lots on Camp st., between S't Joseph and Delord st's		650
Do.	1 lot on Camp street, and 4-story brick store.	5,200
Do.	1 lot fronting on New Levee & Fulton streets, and improvements	1,300
R. W. Burbank, undivided half of lot fronting on Julia st., and improvements		1,075
R. Waples, 1 lot on Carondelet, bet'n Hevia and Poydras st's, & 3-story brick house		1,550
H. Stevenson, 4 lots on Prytania st., between First and Second st's		450
Total am't sales		$10,225 00

Reference is made to the certificate of the recorder of mortgages for the parish of Orleans, hereto annexed, whereby the sales amounted to ten thousand two hundred and twenty dollars cents, which I pay over to Cha's Claiborne, esq., the clerk of the court aforesaid, to be disposed of as the court directs.

Attest: A. BAUD, *D'y Marshal.*

Received from Cuthbert Bullétt, United States marshal, ten thousand two hundred and twenty-five dollars cents, being (as he saith) the proceeds of the foregoing sale; the moneys to be disposed of as the court directs, and for which I have signed duplicate receipts.

110 (Signed) CH'S CLAIBORNE, *Clerk.*

NEW ORLEANS, *March 30th*, 1865.

Certificate from recorder of mortgages.

OFFICE OF MORTGAGES.

The undersigned, recorder of mortgages for the parish of Orleans, city of New Orleans, State of Louisiana, certifies that in the records of his office there are no other mortgages standing in the name of Charles M. Conrad, and recorded against the property described in the printed slip hereto annexed—

1°. Two lots of ground situate in the suberb S't Mary, between S't Joseph and Delord streets, designated by the Nos. 7 and 8, on a plan by C. F. Zimpel, 8th April, 1865, deposited in the office of C. W. Christy. Said lots adjoin each other and measure, each—No. 7 measures 24 feet front on Camp street by 116 feet 10 inches and 5 lines deep between parallel lines; lot No. 8 has a like and equal front on Camp street by 127 feet 10 inches deep between parallel lines, English measure; together with the buildings and improvements thereon.

2°. A certain lot of ground, with the four-story brick store thereon, situate in the first district of said city, in the square bounded by Camp, Grovier, S't Charles, and Poydras streets, designated by the No. 47, on a plan by T. Thompsons, 7th May, 1842, deposited in the office of H. B.

Cenas, which lot of ground measures 23 feet front on Camp street by a depth of 90 feet between parallel lines.

3d. A certain lot of ground situate on the batture in front of the first district, in square bounded by New Levee, La Fayette, Fulton, and Girod streets, designated by the No. 11, on a plan by J. A. Beard, duly
111 certified by Hugh Grant, then surveyor of said district, dated 12th January, 1852, deposited in the office of H. B. Cenas. Said lot measures, according to said plan, 24 feet 2 inches and 7 lines front on New Levee street, and 24 feet 3 inches and 3 lines on said Fulton street by a depth of 119 feet 3 inches and 2 lines on the line dividing it from lot No. 12, American measure; together with all the buildings and improvements thereon.

4°. The one undivided half of a certain lot of ground, situate in the first district of said city, in the square bounded by Julia, Magazine, Notre Dame, and Tchoupitoulas streets, measuring 65 feet front on Julia street by 151 feet deep on the side towards Magazine street, 153 feet 9 inches in depth on the other side, adjoining the property of Peters, Miller, and others, 55 feet 7 inches in width in the rear, adjoining the fire-engine company No. 6; the whole in conformity to a plan drawn by Jos. Pillié, surveyor, and annexed to an act passed before C. Pollock on the 12th May, 1836.

5°. All and singular the lot of ground, together with the three-story brick dwelling-house, the three-story brick buildings, and convenient stable erected thereon, situate on the western side of Carondelet street, between Hevia and Poydras streets, in the suburb St Mary, designated as lot No. 3, on a plan by C. F. Zimple, surveyor, dated 10th December, 1833, deposited as plan No. 1, in the book of plans of Mossy, notary. Said lot measures 23 feet 8½ inches front of Carondelet street by 23 feet 9 inches and 2 lines, more or less, in the rear, by a depth of 147 feet 11 inches, more or less, on the boundary-line of lot No. 2, and of 149 feet 10½ inches, more or less, on the boundary-line of lot No. 4. The place between the stable and the yard is reserved by the said act as an
112 alley to be appropriated forever to the common use of this and the five adjoining tenements designated on said plan.

6°. Four certain lots of ground situate in the faubourg Livaudais, parish of Jefferson, in the square bounded by Prytania, First, Second, and Nayades streets, designated by the Nos. 1, 2, 3, and 4 on a plan by Knell & Werner, on the 10th of May, 1848, deposited in the office of H. B. Cenas, notary. Lots Nos. 1, 2, and 3 measures each 28 feet 1 inch 3 lines front on Prytania street by 120 feet in depth between parallel lines, lot No. 1 forming the corner of First and Prytania streets. Lot No. 4 measures 28 feet 1 inch and 2 lines front on Prytania street by 120 feet deep between parallel lines.

Than the following, to wit: 1° and 2°, B. P. 1, fo's 370 and 391. The privileges in favor of the board of commissioners of the first and second draining districts on the property within their respective limits. 3°, L. P. 1, 102. The privilege in favor of the city of La Fayette, amounting to $114.44, for sidewalk in front of property lastly described, recorded January 20th, 1862. 4°. B. 51, fo. 299. The one by him granted in favor of E. A. Canon, judge of the second district court, as per act before H. B. Cenas, notary public, dated 8 and recorded 10 April, 1847.

On 2dly, 5thly, 1stly, and the 4thly described properties, to secure, 1°, the reimbursement of the portion accruing to his minor children, Charles A. M. A. and Louis Conrad, out of the price at which the real estate belonging to the community between him and his deceased wife, and which was adjudicated to him, amounting to $7,062.50; and

113 2°, to secure the faithful performance of his duties as tutor of said minors.

5°. B. 62, fo. 551. The reversions he assumed by act before E. L. Lewis, notary, the 20th June, recorded July 1st, 1853, up to $1,980 and interest.

6°. B., f. 325. Of the mortgage granted by Michael Aspil on the property 3dly described in favor of municipality No. 2, per act before H. B. Cenas, notary, the 25th March, and recorded the 18th May, 1852, to secure $2,643 and interest.

7°. B. 66, fo. 448. The one he granted as tutor, &c., in favor of J. N. Lee, judge of the second district court, per act before W. Christy, notary, dated the 31st May, and recorded the 1st June, 1855, to secure the rights of his said minor children in the succession of their deceased mother, amounting to $7,062.50, on the 4thly described property.

New Orleans, March 22d, 1865.

(Signed) J. W. MADDEN, *Recorder.*

[5c. stamp, cancelled.]

United States marshal's notice of sale.

In the United States district court, eastern district of Louisiana.

UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF Cha's M. Conrad. } No. 7653.

By virtue of a writ of venditioni exponas, to me directed in the above-entitled suit, I will proceed to sell to the highest bidder, on Wednesday, the 22nd day of March, 1865, at twelve o'clock m., at the Merchants' and Auctioneers' Exchange, No. 18 Royal street, between Canal and Custom-house streets—

Two lots of ground, situate in suburb St Mary, between St Joseph and Delord streets, designated by the Nos. 7 and 8 on a plan by
114 C. F. Zimple, 8th April, 1865, deposited in the office of C. W. Christy. Said lots adjoin each other, and measure each—No. 7 measures 24 feet front on Camp street, by 116 feet 10 inches and 5 lines deep between parallel lines; lot No. 8 has a like and equal front on Camp street, by 127 feet 10 inches deep between parallel lines, English measure, together with the buildings and improvements thereon.

A certain lot of ground, with four-story brick store thereon, situate in the first district of said city, in the square bounded by Camp, Gravier, St Charles, and Poydras streets, designated by the No. 47 on a plan by T. Thompson, 7th May, 1842, deposited in the office of H. B. Cenas, which lot of ground measures 23 feet front on Camp street by a depth of 90 feet between parallel lines.

A certain lot of ground situate on the batture in front of the first district, in square bounded by New Levee, La Fayette, Fulton, and Girod streets, designated by the No. 11 on a plan by J. A. Beard, duly certified by Hugh Grant, then surveyor of said district, dated 12th January, 1852, deposited in the office of H. B. Cenas. Said lot measures, according to said plan, 24 feet 2 inches and 7 lines front on New Levee street, and 24 feet 3 inches and 3 lines on said Fulton street, by a depth of 119 feet 3 inches and 2 lines on the line dividing it from lot No. 12, American measure, together with all the buildings and improvements thereon.

The one undivided half of a certain lot of ground situated in the first district of said city, in the square bounded by Julia, Magazine,
115 Notre Dame, and Tchoupitoulas streets, measuring 65 feet front on

Julia street by 151 feet deep on the side towards Magazine street, 153 feet 9 inches in depth on the other side, adjoining the property of Peters, Miller, and others; 55 feet 7 inches in which in the rear adjoining the fire engine co. No. 6; the whole in conformity to a plan drawn by Jos. Pilié, surveyor, and annexed to an act passed before C. Pollock on the 12th May, 1836.

All and singular the lot of ground, together with the three-story brick dwelling-house, the three-story brick buildings and convenient stables erected thereon, situate on the western side of Carondelet street, between Hevia and Poydras streets, in the suburb St. Mary, designated as lot No. 3 on a plan by C. F. Zimpel, surveyor, dated [illegible] 1853, deposited as plan No. 1 in the book of plans of [illegible]. Said lot measures 23 feet 8½ inches front on Carondelet street, by 23 feet 9 inches and 2 lines, more or less, in the rear, by a depth of 147 feet 11 inches, more or less, on the boundary line of lot No. 2, and of [illegible] feet 10½ inches, more or less, on the boundary line of lot No. 4. The place between the stable and the yard is reserved by the said act as an alley, to be appropriated forever to the common use of this and the two adjoining tenements designated on said plans.

Four certain lots of ground, situate on the fauxbourg Livaudais, parish of Jefferson, in the square bounded by Prytania, First, Second, and Nayades streets, designated by the Nos. 1, 2, 3, and 4, on a plan by Kurll and Werner, on the 19th of May, 1848, deposited in the office of H. B. Cenas, notary.

Lots Nos. 1, 2, and 3 measure each 28 feet 1 inch 3 lines front
116 on Prytania street, 120 feet in depth between parallel lines, lot No. 1 forming the corner of First and Prytania streets. Lot No. 4 measures 28 feet 1 inch and 2 lines front on Prytania street, by 120 feet deep between parallel lines.

Terms, cash at the time of adjudication, in U. S. Treasury notes.

United States marshal's office, New Orleans, 14th day of February, 1865.

(S'g'd) CUTHBERT BULLITT,
U. S. Marshal.

Taxation of costs.

(From the minutes of April 5th, 1865.)

UNITED STATES
vs.
TEN LOTS OF GROUND, PROPERTY OF C. M. Conrad. } No. 7653.

It is ordered, adjudged, and decreed that the costs and charges in this case be taxed as follows, viz:

Dist. att'y for services to 30 June, 1864, 2%.....	$204 [illegible]
Subsequent.....	[illegible]
A. Shaw, ex-clerk.....	[illegible]
C. Claiborne, clerk.....	[illegible]
U. S. comm'r fee.....	[illegible]
C. Bullitt, marshal.....	[illegible]
Registrar's com. 1%.....	[illegible]
J. Graham, ex-marshal.....	[illegible]
	907 23

Decree of distribution.

(From the minutes of April 13th, 1865.)

UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF C. M. Conrad. } No. 7653.

The marshal having returned into court the writ of venditioni
117 exponas showing that the libelled property was sold for $10,225, it is ordered, adjudged, and decreed, that after deducting the costs heretofore taxed and allowed, amounting to $907 33

The U. S. direct tax	103 56
City tax, 1862, int. and com	654 95
" " 1863, " " "	757 05
Clerk' and sheriff's fees	8 50
City tax, 1864	930 00
State tax, 1861	304 80
" " 1862	303 95
" " 1863	303 95
" " 1864	219 90
Drainage tax	32 02
	$4,526 01
The balance of	$5,698 99

be paid into the Treasury of the United States according to law.

Rule to correct marshal's return.—Filed April 4th, 1868.

United States district court for district of L'a.

UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF Charles M. Conrad. } No. 7653.

On motion of Sullivan, Billings, and Hughes, of counsel for Charles M. Conrad, the defendant in this case, and of C. M. Conrad, said defendant in proper person, and on giving the court to understand and be informed that the return made by the marshal of this district, formerly the eastern district of Louisiana, on the order or warrant
118 of seizure issued in this case, showing how the same was executed in the following words and figures, to wit:

"Received August 8th, 1863, and, in obedience to the within warrant, seized and took into my possession the within-described property, posted copies of the libel of information, this warrant, and the order of the judge on the door of the court-house, and published monition in the Era, a daily newspaper printed and published in this city of New Orleans, on the 11, 15, 19, 22, 25, and 29 August, 1863. Returnable 31st August, 1863.

(Signed) "JAMES GRAHAM, *U. S. Marshal.*"

is erroneous in several particulars, but especially in this, that the said marshal therein states that he seized and took into his possession "the within-described property," meaning the property described in said war-

rant or order; whereas, in fact and in law, no such seizure was ever made, and said marshal never did, in fact nor in law, take possession of said property; and that this the said Charles M. Conrad is ready to verify and to prove.

And on further giving the court to understand and be informed that said Charles M. Conrad is about to apply to the honorable the circuit court of the United States for the fifth circuit and this district for a writ of error to this honorable court for the purpose of reviewing the proceedings and the judgment herein,

It is ordered that Samuel H. Torry, esq., U. S. district attorney for the district of Louisiana, do show cause on the 20th day of April, in
119 the year 1868, at 11 a. m., why said errors in said return should not be corrected and said return be so amended as to make the same conform to the facts in the case.

It is further ordered that a copy of this motion be served on Rufus Waples and R. W. Burbank, the purchasers of the property libelled in this case at the sale thereof made under the judgment or decree heretofore rendered in this case.

Personally came and appeared before me Charles M. Conrad, who made oath that he believes, and has good reasons to believe, that the allegations contained in the foregoing motion are correct and true.

(Signed) C. M. CONRAD.

Sworn to and subscribed before me this 4th April, 1868.

K. LOEW, *U. S. Com.*

Submission of rule.—June 1st, 1868.

UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF C. M. Conrad.

The rule in the above case, continued from the 30th ultimo, was resumed, the counsel on both sides being present, and after hearing further argument, the court took time to consider, and allowed the parties twenty days to furnish briefs.

Order pos'poning decision on rule.—June 14th, 1868.

UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF C. M. Conrad. } No. 7653.

Order that the decision in the above case upon the question sub-
120 mitted be deferred till the next term of the court, and that the parties have leave to furnish additional briefs.

Reasons for decree on rule.—Filed July 16th, 1868.

UNITED STATES
vs.
LOTS OF GROUND, THE PROPERTY OF D. F. Kenner. } No. 7642.

UNITED STATES
vs.
LOTS OF GROUND, THE PROPERTY OF C. M. Conrad. } No. 7653.

UNITED STATES
vs.
LOTS OF GROUND, THE PROPERTY OF T. H. Hutch. } No. 7749.

On motion taken by defendants to correct or amend the marshal's return.

In compliance with the request of counsel, the court will briefly state in writing the grounds which were originally assigned for the decisions rendered by the court in these cases, overruling the motions made by defendants that the court should correct certain errors alleged to exist in the marshal's return to the warrant of seizure.

The grounds on which the motion is based is, that at common law an error of this description could be corrected by means of a writ of error, coram vobis, and that in modern practice this writ is generally
121 dispensed with, and whatsoever could be done under it can be done on mere motion. Admitting this to be true, the question arises, is the alleged error of the character of those that could be corrected by the writ of error coram vobis? I think not. (See Tidd's Practice, p. 1191; Fitz Herbert, Martura Brevuim, 21; Writ de Error, Bacon, 2d, p. 484; Error, 16; Year Book, 33d Edward I, A. D. 1305, p. 356.) This last decision was rendered more than five centuries ago, and I have been unable to find any decision by which the doctrine therein laid down has been overruled. The principal is generally recognized that, as between the parties to the suit, the return of the sheriff imports an absolute verity. The motion must therefore be dismissed.

There is another reason why they should be dismissed. Fortunately or unfortunately these suits have all been instituted on the admiralty side of this court, and the proceedings therein have been conducted agreeably to its practice in admiralty cases. But in several decisions recently rendered the Supreme Court of the U. S. (see the case of the U. S. vs. Union Ins. Co. and several others similar to it) have determined that this was a mistake; that seizures on water only can be tried in admiralty, but that seizures on land should be conducted and tried in the same manner provided for revenue seizures on land, including a
122 trial of issues of fact by a jury. That court has even gone further: They have decided that proceedings for the confiscation of property under the act of August 6th, 1861, and July 17th, 1862, are in the nature of criminal proceedings, and must conform to the rules prescribed by the Constitution and the laws for criminal trials.

It follows from these decisions that every step that has been taken in these cases from beginning to end is wrong, and consequently that the decrees of condemnation founded on these proceedings are absolute nullities, and can form no title to property sold under them.

Certificate of clerk of district court of the U. S. for district of Louisiana.

District court of the U. S. for dist. of Louisiana.

I certify that the preceeding 68 pages do contain a full and correct transcript of the record in the case of The United States vs. 10 Lots of Ground, the property of C. M. Conrad, No. 7653 of the docket.

In faith whereof I hereunto set my hand and the seal of our court at New Orleans this 1st August, 1868.

[SEAL.] (S'g'd) K. LOEW,
D'y Clerk.

123 *Petition.—Filed Febr'y 15, 1869.*

THE UNITED STATES OF AMERICA
vs.
TEN LOTS OF GROUND, THE PROPERTY OF Charles M. Conrad. } No. 7653.

To the hon. the judge of the district court of the U. S. for the district of L'a.

The petition of Charles M. Conrad, residing in said State, respectfully represents:

That by a decree of this hon. court, rendered on the 3d day of February, 1865, and signed on the 8th day of said month and year, in the case entitled United States vs. Ten Lots of Ground, the property of C. M. Conrad, No. 7653, certain real estate situated in the city of New Orleans, and alleged to belong to your petitioner, was condemned as forfeited to the United States, and ordered to be sold by the marshal of the said district, which decree has been enrolled and signed.

Your petitioner further shows that there are many manifest errors of law in said decree and in the proceedings on which the same was based, whereby your petitioner is greatly injured and aggrieved.

Wherefore your petitioner prays that he have leave of this court to file the libel of review in said case, which is herewith presented, in which some of the errors of law therein referred to are distinctly set forth, in order that this court may, if it see fit, review said proceedings and said decree, and render such a decision in said libel as it may be com-

124 petent to render, and as it may seem just and proper; and your petitioner will ever pray, &c., &c.

(Signed) C. M. CONRAD,
In Propria Personal.

(Signed) SULLIVAN, BILLINGS AND HUGHES,
Proctors for Petitioners.

Let the accompanying libel of review be filed.
February 15th, 1869.
(Signed) E. H. DURELL, *Judge.*

UNITED STATES OF AMERICA
vs.
TEN LOTS OF GROUND, THE PROPERTY OF Charles M. Conrad. } No. 7653.

To the honorable the dist. court of the U. S. for the district of Louisiana:

Charles M. Conrad, who resides in the city of New Orleans, in said State, appears before this court, and by leave of the court first had and obtained makes known to it by this, his libel of review, the following facts, to wit: That on or about the 7th day of August, 1863, Rufus Waples, then the district attorney of the United States for the eastern district of Louisiana, did exhibit to this hon. court in the name and behalf of the U. S. of America the following libel of information:

Libel of information.—Filed Aug. 7th, 1863.

UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF Charles M. Conrad. } No. 7653.

To the honorable Edward H. Durell, judge of the district court of the United States for the eastern district of Louisiana:

125 The libel of information of Rufus Waples, attorney of the United States of America for the eastern district of Louisiana, who prosecutes for the said United States in this behalf, and being here present in court in his own proper person, in the name and behalf of the said United States of America, against the "estate, property, money, stocks, credits, and effects" hereinafter described, and against all persons intervening for their interest therein, in a case of seizure and forfeiture, alleges, propounds, and declares as follows:

I. That James Graham, esq., marshal of the United States for the said district, under written authority given him by the said attorney in compliance with instructions issued by the Attorney-General of the United States to the district attorney thereof, and by virtue of the act of Congress, approved on the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," heretofore, that is to say, on the twenty-ninth day of July, in the year one thousand eight hundred and sixty-three, seized as forfeited to the United States, at New Orleans, within said district, and within the jurisdiction of this court, two lots of ground, situate in suburb St Mary, between St Joseph and Delord streets, designated by the Nos. 7 and 8 on a plan by C. F. Zimple, 8th April, 1835, deposited in the office of W. C. Christy. Said lots adjoin each other and measure each—No. 7 measures 34 feet
126 front on Camp street, by 116 feet 10 inches, and 5 lines deep, between parallel lines, English measure; together with the buildings and improvements thereon.

A certain lot of ground with a four-story brick store thereon, situate in the first district of said city, in the square bounded by Camp, Gravier, St Charles, and Poydras streets, designated by the No. 47 on a plan by T. Thompson, 7th May, 1842, deposited in the office of H. B. Cenas, which lot of ground measures 23 feet front on Camp street, by a depth of 90 feet, between parallel lines.

A certain lot of ground, situate on the batture in front of the first district, in the square bounded by New Levee, Lafayette, Fulton, and Girod streets, designated by the No. 11 on a plan known as the plan of J. A. Beard, duly certified by Hugh Grant, then surveyor of said district, dated 12th January, 1852, deposited in the office of H. B. Cenas. Said lot measures, according to said plan, 24 feet 2 inches and 7 lines front on New Levee street, and 24 feet 3 inches and 3 lines on said Fulton street, by a depth of 119 feet 3 inches and 2 lines on the line which divides it from lot No. 12, American measure; together with all the buildings and improvements thereon.

The one undivided half of a certain lot of ground, situate in the first district of said city, in the square bounded by Julia, Magazine, Notre Dame, and Tchoupitoulas streets, measuring 65 front on Julia street, by 151 feet deep on the side towards Magazine street, 153 feet 9
127 inches in depth on the other side adjoining the property of Peters,

Miller, and others, 35 feet 7 inches in width on the rear adjoining the fire-engine co. of No. 6. The whole in conformity to a plan drawn by Jos. Pilié, surveyor, and annexed to an act passed before C. Pollock, on the 12th May, 1836.

All and singular the lot of ground, together with the three-story brick dwelling-house, the three-story brick buildings and convenient stable erected thereon, situate on the western side of Carondelet street, between Hevia and Poydras streets, in the suberb St Mary, designated as lot No. 3, a plan by C. F. Zimple, surveyor, dated 10th December, 1833, deposited as plan No. 1, in the book of plans of J. Mossy, notary. Said lot measures 23 feet 8½ inches front on Carondelet street by 23 feet 9 inches and 2 lines, more or less, in the rear, by a depth of 147 feet 11 inches, more or less, on the boundary-line of lot No. 2, and of 149 feet 10½ inches, more or less, on the boundary-line of lot No. 4. The place between the stable and yard is reserved by the said act as an alley to be appropriated forever to the common use of this and the five adjoining tenements designated on said plan.

Four certain lots of ground, situate in the fauhourg Livaudais, parish of Jefferson, in the square bounded by Prytania, First, Second, and Nayades streets, designated by the Nos. 1, 2, 3, and 4, on a plan by Knell and Werner, on the 10th May, 184[illegible], deposited in the office of H. B. Cenas, notary. Lots Nos. 1, 2, and 3 measure each 28 feet 1 inch 3 lines front on Prytania street, by 120 feet in depth, between parallel lines; lot No. 1 forming the corner First and Prytania. Lot No. 4
128 measures 28 feet 1 inch and 2 lines front on Prytania street, by 120 feet deep, between parallel lines, American measure.

II. That the person who owns the said property, Ch's M. Conrad, of New Orleans, L'a, is, and was on the 17th day of July, 1862, and previously thereto had been, the owner thereof.

III. That certain States forming a part of the territory and constituting a part of the United States of America, and specifically enumerated by the Presidents of the United States in his proclamation, duly issued and bearing date the first day of July, A. D. eighteen hundred and sixty-two, are now engaged, and were at the time said proclamation was issued engaged, and have since continued to be engaged in armed rebellion against the lawful authority of the United States.

IV. That by the act of Congress of the United States, approved the 17th day of July, in the year of our Lord 1862, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," provision was made for the seizure and confiscation of the property of persons engaged in armed rebellion against the lawful authority of the United States, and of other persons, as therein set forth.

V. That the said Ch's M. Conrad, the person whose property is herein seized, subsequently to the said seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, did not as an officer of the army or navy of the rebels in arms against the Government of
the United States, or as a member of congress, or as a judge of a
129 court, or as a cabinet officer, or as a foreign minister, or as a commissioner, or as a consul of the so-called Confederate States of America; or that, while owning property in a loyal State or Territory of the United States, or of the District of Columbia, he did give aid and comfort to the rebellion against the United States, and did assist such rebellion.

VI. That the said Ch's M. Conrad, the person who owns the said property, subsequently to the said seventeenth day of July, in the year

of our Lord one thousand eight hundred and sixty-two, did act as governor of a State, or a member of a convention or legislature, or as a judge of a court, of one of the so-called Confederate States of America, to wit, the State of Louisiana; or did hold an office in the so-called Confederate States of America, after having held an office of trust or profit in the United States; or did hold an office or agency under the government of the so-called Confederate States of America, or under one of the States thereof, said office being national, State, or municipal in its name and character, which said office or agency he accepted after the date of the pretended ordinance of secession of the State of Louisiana; that he did take an oath of allegiance to, or to support the constitution of the so-called Confederate States.

VII. That the said Ch's M. Conrad, the person who owns the said property, subsequently to the said seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, within a State or Territory of the United States, was engaged in armed rebellion against the Government of the United States, and did not within
130 sixty days after public warning and proclamation duly given and made by the President of the United States, on the twenty-fifth day of July, in the year one thousand eight hundred and sixty-two, cease to aid, countenance, and abet such rebellion, and return to his allegiance to the United States.

VIII. That the said Ch's M. Conrad, the person who owns the said property, subsequently to the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, within a State or Territory of the United States, was engaged in aiding and abetting an armed rebellion against the Government of the United States, and did not within sixty days after public warning and proclamation duly given and made, on the twenty fifth day of July, in the year one thousand eight hundred and sixty-two, by the President of the United States, cease to aid, countenance, and abet such rebellion, and return to his allegiance of the United States.

IX. That by reason of the premises, the property herein described, and all the right, title, interest, and estate of the said person or persons whose property is described herein, became and was forfeited to the United States, and ought to be condemned to their use.

Wherefore, the said attorney, in the name and behalf of the United States of America, prays that process of monition may issue against the said property and the owner and owners thereof, and against all persons interested or claiming an interest therein, warning them
131 at some early day, to be named therein, to appear and answer this libel of information, and that an order of publication may be made in the usual form, and that the court may grant such further and other relief as to law and justice may appertain, and as this court is competent to give in the premises, and that after due proceedings had, the said property may be condemned and forfeited to the United States of America; and he prays for general relief.

(Signed) RUFUS WAPLES,
U. S. District Attorney for the Eastern District of Louisiana.

Upon the filing of the above libel the following order was rendered by this court, and the following warrant was issued:

Order of publication.—Issued August 8th, 1863.

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF Charles M. Conrad. } No. 7653.

Whereas two lots of ground situate in suberb S't Mary, between S't Joseph and Delord streets, designated by the Nos. 7 and 8 on a plan by C. F. Zimple, 8th April, 1835, deposited in the office of W. Christy. Said lots adjoin each other and measure each:—No. 7 measures 24 feet front on Camp street, by 116 feet 10 inches and 5 lines deep, between parallel lines; lot No. 8 has a like and equal front on Camp street, by 127 feet 10 inches, between parallel lines, English measure; together with the buildings and improvements thereon.

132 A certain lot of ground, with the four-story brick store thereon, situate in the first district of said city, in the square bounded by Camp, Gravier, S't Charles, and Poydras streets, designated by the No. 47 on a plan by T. Thompson, 7th May, 1842, deposited in the office of H. B. Cenas, which lot of ground measures 23 feet front on Camp street, by a depth of 90 feet, between parallel lines.

A certain lot of ground situate on the batture in front of the first district in the square bounded by New Levee, Lafayette, Fulton, and Girod streets, designated by the No. 11 on a plan known as the plan of J. A. Beard, duly certified by Hugh Grant, then surveyor of said district, dated 12th January, 1852, deposited in the office of H. B. Cenas. Said lot measures, according to said plan, 24 feet 2 inches and 7 lines front on New Levee street, and 24 feet 3 inches and 3 lines on said Fulton street, by a depth of 119 feet 3 inches and 2 lines on the line which divides it from lot No. 12, American measure; together with all the buildings and improvements thereon.

The one undivided half of a certain lot of ground situate in the first district of said city, in the square bounded by Julia, Magazine, Notre Dame, and Tchoupitoulas streets, measuring 65 feet front on Julia street, by 151 feet deep on the side towards Magazine street, 153 feet 9 inches in depth on the other side adjoining the property of Peters, Miller, and others, 35 feet 7 inches in width in the rear adjoining the fire-engine co. of No. 6. The whole in conformity to a plan drawn by Jos. Pilié,

133 surveyor, and annexed to an act passed before C. Pollock, on the 12th May, 1836.

All and singular the lot of ground, together with the three-story brick dwelling-house, the three-story brick buildings and convenient stable erected thereon, situate on the western side of Carondelet street, between Hevia and Poydras streets, in the suberb S't Mary, designated as lot No. 3 on a plan by C. F. Zimple, surveyor, dated 10th December, 1833, deposited as plan No. 1, in the book of plans of J. Mossy, notary. Said lot measures 23 feet 8½ inches front on Carondelet st., by 23 feet 9 inches and 2 lines, more or less, in the rear, by a depth of 147 feet 11 inches, more or less, on the boundary-line of lot No. 2, 149 feet 10½ inches, more or less, on the boundary-line of lot No. 4. The place between the stable and yard is reserved by said act as an alley, to be appropriated forever to the common use of this and the five adjoining tenements on said plan.

Four certain lots of ground situate on the faubourg Livaudais, par-

ish of Jefferson, in the square bounded by Prytania, First, Second, and Mayades streets, designated by No. 1, 2, 3, and 4, on a plan by Knell and Werner, on the 10th of May, 1848, deposited in the office of H. B. Cenas, notary. Lots Nos. 1, 2, and 3 measure 28 feet 1 inch 3 lines front on Prytania street, by 120 feet in depth, between parallel lines, lots No. 1 forming the corner of First and Prytania streets; lot No. 4 measures 28 feet 1 inch 2 lines front on Prytania street, by 120 feet deep, between parallel lines, American measure; together with all the improvements, buildings, rights, privileges, appurtenances, and other hereditaments to the same belonging or in anywise appertaining;

134 and all the right, title, and interest of the said Charles M. Conrad therein has been seized by the marshal of the United States for the eastern district of Louisiana, by virtue of an act of Congress approved on the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes." And whereas the United States attorney for the eastern district of Louisiana did, on the seventh day of August, 1863, file a libel of information in this court, praying the condemnation of said property and real estate, under the act aforesaid, and that process of monition issue against the owner and owners of said property and real estate, and all persons interested or claiming an interest therein, warning them at an early day to appear and answer said information:

It is, therefore, on this 8th day of August, in year of our Lord one thousand eight hundred and sixty-three, ordered that notice be given to the owner and owners of said property and real estate, and all parties interested or claiming an interest therein, to appear and answer this information on the thirty-first of August, and show cause, if any they have, why said property and real estate, and the right, title, and interest therein of the said Charles M. Conrad, should not be condemned and sold according to law; and that notice be given by posting a copy of this order upon the front door of the court-house of the district and by publication in the Era newspaper twice a week previous to said 31st day of August, A. D. 1863; the first publication to be on or before 11th inst.

135 (Signed) E. H. DURELL, *U. S. Judge.*

NEW ORLEANS, *Aug.* 8, 1863.

Ad. warrant.

The President of the United States of America to the marshal of the eastern district of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded forthwith to seize, and into your possession take, the property, a full description whereof is hereto annexed as a part of this writ, together with all the improvements, buildings, privileges, and other hereditaments thereunto belonging, as well as all the right, title, and interest of Charles M. Conrad therein, now libelled by the United States for the causes set forth in the libel now pending in district court of the United States for the eastern district of Louisiana; that you do cite and admonish the owner or owners, and all and every other person or persons having, or pretending to have, any right, title, or interest in or to the same, to be and appear before a district court of the United States for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the service hereof, to show cause, if any they have or can, why the said property, &c., should

not be condemned and sold agreeably to the prayer of libellant; and how you have executed this warrant, that you make return according to law.

Witness the honorable Edward H. Durell, judge of the said court, at New Orleans, this 8th day of August, 1863, and the 88 year of the Independence of the United States.

(S'g'd) ALFRED SHAW, *Clerk*,
By K. LOEW, *D'y Clerk*.

136 *Marshal's return.*

Received August 8th, 1863, and in obedience to the within warrant seized and took into my possession the within-described property, posted copies of the libel of information, this warrant, and the order of the judge on the door of the court-house, and published monition in the "Era," a daily newspaper printed and published in this city of New Orleans, on the 11, 15, 19, 22, 25, 29 August, 1863. Returnable 31st August, 1863.

(Signed) JA'S GRAHAM,
U. S. Marshal.

Description of property.

(Description of real estate libelled in suit No. 7653.)

Two lots of ground situate in suburb S't Mary, between S't Joseph and Delord streets, designated by the Nos. 7 & 8 on a plan by C. F. Zimple, 8th April, 1835, deposited in the office of W. C. Christy. Said lots adjoin each other and measure each—No. 7 measures 24 feet front of Camp street by 116 feet 10 inches 5 lines deep between parallel lines; lot No. 8 has a like and equal front on Camp street, by 127 feet 10 inches deep between parallel lines, English measure; together with the buildings and improvements thereon.

A certain lot of ground with the four-story brick store thereon, situated in the first district of said city, in the square bounded by Camp, Gravier, S't Charles, and Poydras streets, designated by the No. 47 on a plan by T. Thompson, 7th May, 1842, deposited in the office of H. B. Cenas; which lot of ground measures 23 feet front on Camp street by a depth of 90 feet between parallel lines.

137 A certain lot of ground situated on the batture in front of the first district, in square bounded by New Levee, La Fayette, Fulton, and Girod streets, designated by the No. 11 on a plan known as the plan of J. A. Beard, duly certified by Hugh Grant, then surveyor of said district, dated 12th January, 1852, deposited in the office of H. B. Cenas. Said lot measures, according to said plan, 24 feet 2 inches and 7 lines front on New Levee street, and 24 feet 3 inches 3 lines on said Fulton street, by a depth of 119 feet 3 inches and 2 lines on the line which divides it from lot No. 12, American measure; together with all the buildings and improvements thereon.

The one undivided half of a certain lot of ground situated in the first district of said city, in the square bounded by Julia, Magazine, Notre Dame, and Tchoupitoulas streets, measuring 65 feet front on Julia street by 151 feet deep on the side towards Magazine street, 153 feet 9 inches in depth on the other side adjoining the property of Peters, Miller, and others, 35 feet 7 inches in width on the rear adjoining the fire-engine co. No. 6. The whole in conformity to a plan drawn by Jo's Pilié, sur-

veyor, and annexed to an act passed before C. Pollock, on the 12th May, 1836.

All and singular the lot of ground, together with the three-story brick dwelling-house, the three-story brick buildings, and convenient stable erected thereon, situated on the western side of Carondelet street, between Hevia and Poydras street, in the suburb S't Mary, designated as lot No. 3 on a plan by C. F. Zimple, surveyor, dated 10th December, 1833, deposited as plan No. 1 in the book of plans of J. Mossy,
138 notary. Said lot measures 23 feet 8½ inches front on Carondelet street by *a* 23 feet 9 inches and 2 lines, more or less, in the rear, by a depth of 147 feet 11 inches, more or less, on boundary-line of lot No. 2, and of 149 feet 10½ inches, more or less, on the boundary-line of lot No. 4. The place between the stable and yards is reserved by said act as an alley, to be appropriated forever to the common use of this and the five adjoining tenements designated on said plan.

Four certain lots of ground situated in the faubourg Livaudais, parish of Jefferson, in the square bounded by Prytania, First, Second, and Nayades streets, designated by the Nos. 1, 2, 3, and 4 on a plan by Knell and Werner, on the 10th May, 1848, deposited in the office of H. B. Cenas, notary; lot Nos. 1, 2, and 3 measure each 28 feet 1 inch 3 lines front on Prytania street, by 120 feet in depth between parallel lines, lot No. 1 forming the corner of First and Prytania streets; lot No. 4 measures 28 feet 1 inch and 2 lines front on Prytania street, by 120 feet deep between parallel lines, American measure.

Aug. 8, 1863.

True copy.

(Signed) K. LOEW,
D'y Clerk.

Whereupon the following monition was issued and published by the marshal.

Marshal's monition.

Marshal's monition in the United States district court, eastern district of L'a.

UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF Charles M. Conrad. } No. 7653.

139 In obedience to a warrant issued in this court, to me directed, in the above-entitled suit, I have seized and taken into my possession two lots of ground, situated in suburb S't Mary, between S't Joseph and Delord streets, designated by the Nos. 7 and 8 on a plan by C. F. Zimple, 8th April, 1835, deposited in the office of W. Christy. Said lot' adjoin each other and measure each—No. 7 measures 24 feet front, on Camp street, by 116 feet 10 inches and 5 lines deep, between parallel lines; lot No. 8 has a like and equal front on Camp street, by 127 feet 10 inches deep between parallel lines, English measure.

A certain lot of ground situate in the first district of said city, in the square bounded by Camp, Gravier, S't Charles, and Poydras streets, designated by the No. 47 on a plan by F. Thompson, 7th May, 1842, deposited in the office of H. B. Cenas, which lot of ground measures 23 feet front on Camp street by a depth of 90 feet between parallel lines.

A certain lot of ground situate on the batture, in front of the first district, in the square bounded by New Levee, La Fayette, Fulton, and Gaiennie streets, designated by the No. 11 on a plan known as the plan of J. A. Beard, duly certified by Hugh Grant, then surveyor of said district, dated 12th January, 1852, deposited in the office of H. B. Cenas. Said lot measures, according to said plan, 24 feet 2 inches and 7 lines front on New Levee street and 24 feet 3 inches and 3 lines on said Fulton street, by a depth of 119 feet 3 inches and 2 lines on the line which divides it from lot No. 12, American measure.

The one undivided half of a certain lot of ground situate in the
140 first district of said city, in the square bounded by Julia, Magazine, Notre Dame, and Tchoupitoulas streets, measuring 65 feet front on Julia street by 151 feet deep on the side towards Magazine street; 153 feet 9 inches in depth on the other side, adjoining the property of Peters, Miller, and others; 35 feet 7 inches in width on the rear, adjoining the fire-engine co. No. 6. The whole in conformity to a plan drawn by Tho's Pilié, surveyor, and annexed to an act passed before C. Pollock on the 12th May, 1836.

All and singular the lot of ground situated on the western side of Carondelet street, between Hevia and Poydras streets, in the suburb St Mary, designated as lot No. 3 on a plan by C. F. Zimple, surveyor, dated 10th December, 1833, deposited as plan No. 1 in the book of plans by T. Mossy, notary. Said lot measures 23 feet 8½ inches front on Carondelet street, 23 feet 9 inches and 2 lines, more or less, in the rear, by a depth of 147 feet 11 inches, more or less, on the boundary-line of lot No. 2, and 149 feet 10½ inches, more or less, on the boundary line of lot No. 4. The place between the stable and yards is reserved, by the said act, as an alley, to be appropriated forever to the common use of this and the five adjoining tenements designated on said plan.

Four certain lots of ground situate in the faubourg Livaudais, in the parish of Jefferson, in the square bounded by Prytania, First, Second, and Nayades streets, designated by the Nos. 1, 2, 3, and 4 on a plan by Knell and Werner, on the 10th May, 1848, deposited in the office of H. B. Cenas, notary. Lots Nos. 1, 2, and 3 measure each 28 feet 1 inch 3 lines front on Prytania street, by 120 feet in depth between parallel lines, lot No. 1 forming the corner of First and Prytania st's. Lot No. 4 measures 28 feet 1 inch and 2 lines front on Prytania street, by 120
feet deep, between parallel lines, American measure. Together
141 with all the improvements, buildings, rights, privileges, appurtenances, and other hereditaments to the same belonging or in anywise appertaining, and all the right, title, and interest of the said Charles M. Conrad therein, now libelled by the United States for the reasons assigned and set forth in the libel in the above-entitled suit now pending in the said district court. And I do hereby cite and admonish the owner or owners thereof and all persons having or pretending to have any right, title, or interest in or to the same to be and appear at a district court of the United States for the district aforesaid, to be holden at the city of New Orleans on or before the third Monday from the date hereof, to show cause, if any they have or can, why the said above-described property should not be condemned and forfeited to the United States agreeably to the prayer of the libellants.

United States marshal's office, New Orleans, 11th day of August, 1863.

(Signed) JAMES GRAHAM,
U. S. Marshal.

Aug. 11, 15, 19, 22, 25, 29.

Your libellant, in review, further shows that on the 1st day of September, 1863, the following order of default was entered in the same:

Default.

(Extract from minutes 1st September, 1863.)

UNITED STATES *vs.* TEN LOTS OF GROUND, THE PROPERTY OF Cha's M. Conrad.	No. 7653.	Default.

The delay allowed by law having expired herein, and no claim or defence having been filed after due monition and proclamation—

On motion of the district attorney, it is ordered that all persons
142 interested in the property seized herein be in contumacy and default, and the libel adjudged and taken pro confesso.

That at various times thereafter several persons were without any order of the court examined out of court by the district attorney, and their testimony reduced to writing, your libellant in review having no notice or knowledge of this examination.

That finally, on the 3d day of February, 1865, the said case came to trial and was heard by the judge alone and without the aid of a jury.

The evidence, consisting of the depositions (taken down in writing) of the witnesses above referred to, was submitted to the judge, and on the same day the following decree was rendered:

Hearing; decree of condemnation.—No. 7653.

This cause came up for trial, district attorney for libellants, and, the monition issued in this case having been heretofore returned, the usual proclamation having been made, the default of all persons entered, and the law and the evidence duly considered, it is thereupon, on motion of R. Waples, esq., U. S. attorney, ordered, sentenced, and decreed by the court now here, and his honor the district judge, by virtue of the power and authority in him vested, doth hereby order, sentence, and decree, that the ten lots of ground, with the buildings and improvements thereon, the property of Charles M. Conrad, a full description whereof is contained in the libel on file, be, and the same are hereby, condemned as forfeited to the United States. And it is further ordered and decreed that the clerk of this court issue a writ of venditioni exponas to the marshal of the district, returnable on the 15th March, 1865, and
143 that upon the return thereof the proceeds be distributed according to law, the legal rights of the intervenor to the proceeds being reserved for further action.

Judgment rendered February 3, 1865.

Judgment signed February 8, 1865.

(Signed) E. H. DURELL, *Judge.*

Which judgment or decree has been duly enrolled and signed.

Whereupon a writ of venditioni exponas was issued for the sale of said lots of ground.

The following is a copy of said writ and of the return of the marshal of his acts and doings under the same in relation to the sale of the property condemned:

Venditioni exponas.—Filed March 30th, 1865.

United States district court, eastern district of Louisiana.

THE UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF C. M. Conrad. } No. 7653.

The President of the United States of America to the marshal of the eastern district of Louisiana, or either of his deputies, greeting:

Whereas at a district court of the United States holden at New Orleans for and within said district, on the 3d day of February, 1865, ten lots of ground, with all the buildings and improvements thereon, the property of Charles M. Conrad, fully described in the libel of information on file, were, after proclamation and due proceedings had, decreed forfeit and ordered to be sold at public auction:

These are, therefore, to command you to sell to the highest bid-
144 der, at Merchants & Auctioneers' Exchange, 18 Royal street, within said district, on the 22d day of March, 1865, at 12 o'clock m., the said property, first giving thirty days' notice, at least, of the time and place of sale by advertising the same in the True Delta, one of the newspapers printed at New Orleans, and by proclamation in the usual form on the day of sale; the money arising from the sale to be paid into the registry of the said court to be disposed of as the law in this case directs. And make due return hereof with your doings herein.

Witness the honorable Edward H. Durell, at New Orleans, this 10th day of February, A. D. 1865, and 89th year of the Independence of the United States of America.

[SEAL.] (Signed) W. S. BENEDICT,
Dy Clerk.

Marshal's return.—Filed March 30th, 1865.

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

NEW ORLEANS, *March 30th*, 1865.

Pursuant to this precept I have caused the property within named to be sold by public auction, and to the highest bidder, at Merchants & Auctioneers' Exchange, 18 Royal street, on the day, hour, and place therein directed, having given thirty days' previous notice of the time, place, and manner of the sale in the True Delta, one of the newspapers printed in the city of New Orleans, and by the crier on the day of sale, and at such sale the purchasers were as under:

	$ cts.
Rufus Waples, two lots on Camp street, between St Joseph and Delord streets	650 00
Do., one lot on Camp street, and four-story brick store	5,200 00
Do., one lot fronting on New Levee and Fulton streets, & improvements	1,300
B. W. Burbank, undivided half of lot fronting on Julia
145 street, and improvements	1,075 00
Rufus Waples, one lot on Carondelet between Hevia and Poydras streets, and 3-story brick house	1,550 00
J. H. Stevenson, four lots on Prytania street, between First and Second streets	450 00

Reference is made to the certificate of the recorder of mortgages of the parish of Orleans hereto annexed.

Whereby the sales amounted to ten thousand two hundred and twenty-five dollars cents, which I pay over to Ch's Claiborne, esq., the clerk of the court aforesaid, to be disposed of as the court directs.

Attest:

(S'g'd) A. BAUDOIN,
D'y Marshall.

Received from Cuthbert Bullitt, U. S. marshal, ten thousand two hundred and twenty-five dollars cents, being (as he saith) the proceeds of the foregoing sale; the moneys to be disposed of as the court directs, and for which I have signed duplicate receipts.

[SEAL.] (S'g'd) CH'S CLAIBORNE,
Clerk.

NEW ORLEANS, *March 30th*, 1865.

Libel, continued.

Your libellant in review, the said Charles M. Conrad, further avers that the said decree condemning said property and the order directing the sale thereof were erroneously passed, and ought to be reviewed, reversed, and held for nothing, and the sale made in pursuance of said order of sale set aside and declared of no effect, for the many manifest errors and irregularities apparent in the same, and in the proceedings upon which the same were founded.

Your libellant specially propounds and articulates the following among other errors of law and irregularities apparent in said decree and upon the face of said record:

146 1°. That it does not appear by the record in said suit that any seizure of the property sought to be, and which was, condemned was ever made by order of the President of the United States, preliminary to the institution of proceedings for the condemnation of the same, as by law was required to be done.

2°. That the proceedings in said case were on the admiralty side of the court, and conducted according to the forms of the admiralty, whereas they should have been on the common-law side of the court, and conducted agreeably to the forms of common law.

3°. That it does not appear by said record that said C. M. Conrad, your libellant in review, the accused in said suit, was ever tried for or convicted by a jury of the acts of treason and rebellion alleged in said libel of information to have been committed by him.

4°. That it does not appear by said record that said C. M. Conrad was present at the said pretended trial, or that he was ever in any manner informed of the nature and cause of the accusation against him, or had any knowledge thereof, or had the assistance of counsel in his defence therein.

5°. That it appears by said record that the so-called libel of information therein does not set forth with sufficient clearness the precise nature of the act or acts, crime or crimes, alleged to have been committed by said Conrad, and for which the forfeiture of the said property was demanded, nor the time nor times, place nor places, when and where the same were committed; but is vague, uncertain, and indefinite, and various and distinct offences are therein charged, and charged in the same count.

147 6°. That the acts or crimes charged in said libel of information

against said Conrad are not alleged to have been committed within the limits of the State or district of Louisiana.

7°. That it does not appear by said record by specification of title, or other sufficient averment, what statute or statutes the said information was founded , as required by law.

8°. That it does not appear by said record that either in the articles of said libel of information, or in either of them, or in the libel of information itself, were the acts charged against said Conrad alleged to be contrary to the form of the statute or statutes of the United States in such case provided, as required by law and by the rule of the Supreme Court in such case prescribed.

9°. That it appears by said record that no return was made to the order rendered by the judge on the 8th day of August, 1863, directing that notice be given to the owner or owners of said property & real estate, and all persons interested or claiming an interest therein, to appear and answer the said information on the thirty-first (31st) day of August, 1863, or to show cause if any they had why the same, and the right, title, and interest of your libellant in review therein, should not be condemned and sold according to law, and prescribing the mode in which said notice should be given.

10°. That it does not appear by said record that notice was given to said C. M. Conrad, the alleged owner of said property, to appear and answer said information on the 31st day of August, 1863, and show cause if any he had why the said property and real estate, and his right, title, and interest therein, should not be condemned and sold according to law, as required by the terms of the above-mentioned order of August 8, 1863.

148 11°. That it does not appear by said record that your libellant, the alleged owner of said property, was ever cited or admonished to show cause if any he had or could why said property should not be condemned and forfeited to the United States, or was in any manner notified of the proceedings against the same.

12°. That it appears by said record that neither a special monition directed to said C. M. Conrad, the alleged owner of said property, nor a mixed monition, directed to said C. M. Conrad, the alleged owner of said property, and all parties interested therein, was issued in this case, as prescribed by law and by the order of the court, and that no return was made to the general monition, as required by law.

13°. That it does not appear by said record that said C. M. Conrad, the defendant in said suit, was ever called to be defaulted, nor that said defendant was pronounced by the court to be in contumacy and default, nor that, in consequence of his contumacy and default, the libel was adjudged to be taken pro confesso against him, as required by law and by the rules in such case prescribed by the Supreme Court of the United States.

14°. Your libellant in review farther avers that none of the other means and precautions prescribed by law to notify the owners of property libelled in admiralty or revenue cases when such owners are known, particularly in proceedings in personam, were employed in this case; that no actual possession was ever taken of the property libelled, and no seizure whatever thereof was made by the marshall, and that the statement contained in his return, as your libellant is ready to verify, absolutely untrue.

149 Your libellant farther avers that the description given in the monition of the property therein stated to have been seized by the marshal *are* insufficient and 'definite in itself, and does not corre-

spond with that contained in the libel and warrant of seizure. That at the time said property was libelled and the seizure was alleged to have been made, there were valuable buildings & improvements on most of the lots described in the libel and warrant of seizure. He specially avers that on the lot of ground secondly described in the warrant of seizure, situate on Camp street, near the corner of Gravier street, there was four (4) story brick store erected; that on the property thirdly (3d) described in said warrant, fronting on New Levee and Fulton streets, there was a valuable story brick store; that on the property fourthly described in said warrant, situated on Carondelet street, there was a three-story brick dwelling-house, with three-story brick buildings and convenient stable; and that on the property fifthly described in said warrant on Julia street, between Magazine and Tchoupitoulas streets, there was standing a large and valuable brick warehouse of the height of two stories, while on some of the lots described in said monition and warrant there were no buildings or improvements whatever.

Your libellant further alleges that the buildings on the four lots above mentioned exceed the value of the lots upon which they are erected, and that none of them were described in the monition published by the marshal; that although it is stated generally that the buildings and improvements on the lots seized were also seized, it is not stated on which of the lots described in the monition there were buildings
150 and improvements erected, and which of them were vacant. Your petitioner avers that even when the buildings and improvements on the property libelled had been described in the libel and warrant of seizure, this description was omitted in the monition, and that the description of said property contained in said monition was in other respects incorrect and calculated to mislead the owners thereof.

Your libellant in review avers that the manifest effect and tendency of the omissions, misdescriptions, and misstatements above mentioned was both to depreciate the apparent value of the property, and to prevent the knowledge of the seizure thereof from reaching your libellant; and he verily believes, and so charges and submits to your honor, that said omissions, misdescriptions, and misstatements were fraudulent, and operated as a fraud on your libellant and other parties interested in said property, and on the court and on the Government.

15°. That it appears by said record that the said case was tried and that the facts therein were found by the judge of this court alone, and without the aid or intervention of a jury.

16°. That it does appear by said record that the property libelled and condemned as aforesaid was not "found to have belonged to a person engaged in rebellion," or "to a person who had given aid or comfort thereto," as required by the statute on which said proceedings were founded.

17°. That it appears by said record that all the right, title, and interest of said Charles M. Conrad in and to the real estate libelled in said suit was, by said decree of condemnation, condemned and ad-
151 judged to be forfeited absolutely and in fee-simple, and not merely the right, title, and interest of said Charles M. Conrad in said property during his natural life, contrary to the Constitution of the United States, and to the laws thereof in such case provided, on which said proceedings were based.

Your libellant in review further avers that more than a year before the original libel in this case was filed, and before even the passage of the act on which these proceedings are based, your libellant had sold, conveyed, and transferred to his two sons, Charles A. Conrad and L

Lewis Conrad, by authentic act executed in the parish of Orleans and duly recorded in the parish of Orleans, all the property described in said libel and warrant except the lot of ground with a house thereon situated on the batture in the square bounded by New Levee, La Fayette, Fulton, and Girod streets, designated by the No. 11 on plan known as that of J. A. Beard; said lot measuring 24 feet 3 inches 9 lines front on New Levee by a front of 24 feet 3 inches and 3 lines front on Fulton street, by a depth of 119 feet 3 inches and 12 lines on the line which divides it from No. 12, but that said last mentioned lot was at the time said proceedings were instituted, at the time it was condemned and sold, and still remains, the property of your libellant.

Your lebellant in review alleges that he has received full pardon and amnesty from the President of the United States for all or any crimes or offences against the United States that may have been committed by him during the late rebellion.

152 In consideration whereof, and inasmuch as the errors and imperfections above enumerated, and others not herein specified, appear in the body of said decree and on the face of the proceedings on which the same was founded, your libellant in review prays that this, your libellant's bill of review, be entertained; that the United States be notified thereof by service on their district attorney, or in such other mode and form of process as to your honor may seem fit and proper and this court is competent to issue; and that after due proceedings had said decree rendered on the 3d day of February, 1865, and signed on the 8th day of February, 1865, condemning said property as forfeited to the United States, and ordering the same to be sold, be reviewed and set aside and held for nothing, and that your libellant in review have such other and further relief and redress herein as to right and justice may appertain and your honor is competent to grant.

And as in duty bound your libellant will ever pray, &c., &c.

(Signed) C. M. CONRAD, *in propria persona.*

(Signed) SULLIVAN, BILLINGS & HUGHES,
Proctors for Libellant in Review.

Personally came and appeared before me, Charles M. Conrad, who made oath that each of the allegations in the foregoing libel of review as are alleged as facts are true, and such thereof as he affirms his belief he believes to be true, and that all of such allegations are true to the best of his knowledge and belief.

(Signed) C. M. CONRAD.

Sworn to and subscribed before me this 15th February, 1869.

(S'g'd) K. LOEW,
U. S. Com'r.

Amended libel of review.—Filed Nov. 29th, 1869.

153 *Amended libel of review.—Filed Nov. 29th, 1869.*

District court of the United States, district of Louisiana.

THE UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF C. M. Conrad. } No. 7653.

The libellant in review, by leave of the court first obtained, amends his libel by adding thereto the following words, to be inserted after the words "held for nothing" at page thereof, to wit:

Your libellants in review avers that it appears by the marshal's return to the writ of venditioni exponas issued therein, and already referred to, that the different portions of the property sold under said writ were purchased by Rufus Waples and E. W. Burbank and J. H. Stephenson, respectively, Rufus Waples having purchased much the larger and more valuable portion thereof.

Your libellant further avers that J. H. Stephenson has surrendered to the owners thereof, to wit, C. A. and L. L. Conrad, the lots purchased by him, but that said Waples and Burbank refuse to surrender the portions purchased by them, respectively, and persist in retaining possession thereof, and continue to receive the rents and profits thereof.

But your libellant avers that the said sales to said Waples and said Burbank are null and of no effect by reason of the many irregularities and illegalities herein already set forth and enumerated, and of others that will hereafter be shown, and conveyed no titles whatever to said purchasers.

Your libellant in review specially avers that the sale of the property sold under said writ to and purchased by Rufus Waples, and particularly of the house and lot No. 11 (eleven) Fulton street, described in
154 said writ, was null and void for the further reason that it appears by said record, and so the truth is, that at the time those said proceedings against said properties were instituted, and during the whole period thro' which they continued, and at the time said purchase was made, said Rufus Waples was the district attorney of the United States for the eastern district of Louisiana, wherein said proceedings were held; that said property was originally seized by his order, and said proceedings were from the beginning to the end thereof conducted by him or under his direction and control, and that under these circumstances the purchase of any portion of said property by said Waples was a violation of his official duty, contrary to conscience and good morals and to public policy, and was illegal.

Wherefore your libellant in review prays that, in view of the premises, said Waples and said Burbank be made parties to these proceedings; that said Waples be decreed to surrender and deliver up the lot No. 11, Fulton street, with the brick store thereon, to your libellant, as the true and lawful owner thereof; and further, inasmuch as said Waples acquired and has ever since held said property in bad faith, that he be ordered and decreed to render to your libellant a full and true account of the rents and profits thereof while in his possession, and to pay to your libellant in review such sum as upon such accounting may be found to be due to him; and that your libellant in review have such other and such further relief as the nature of his case may require and as shall be agreeable to equity and conscience.

155 May it further please this honorable court to grant unto your libellant the writ of subpœna, to be directed to said Waples and to said Burbank, commanding them and each of them, under a penalty therein to be fixed, to be and appear on a day certain before this honorable court, to answer these premises, and further to abide, stand to, and perform such other and further order and decree as the case shall require and to this honorable court may seem meet and proper.

And your libellant in review will, as in duty bound, ever pray, &c., &c.

(Signed) C. M. CONRAD, *in prop. pers.*

Personally appeared before me Charles M. Conrad, libellant in review herein, who made oath that the facts alleged in the foregoing amendment to the libel are true and correct.

NOTE OVER.—The word "said" erased and the words "the foregoing amendment to the" interlined before being sworn to or signed.
(S'g'd) C. M. CONRAD.

Sworn to and subscribed before me this 29th November, 1869.
(S'g'd) K. LOEW, *U. S. C.*

Let this amended libel in review be filed.
November 29, 1869.
(S'g'd) E. H. DURELL, *Judge.*

Marshal's return.

Received December 1st, 1869, by the U. S. marshal, and on the 23d day of the same month and year served a copy of the within amended libel of review on E. W. Burbank by delivering the same to him
156 in person.

And on the 23d day of the same month and year served a copy of the within amended libel of review on Rufus Waples, by delivering the same to him in person.

New Orleans, Dec. 23d, 1869.
(Signed) S. W. REED,
Dep'y U. S. Marshal.

Order of discontinuance of rule to amend marshal's return.—Dec. 23d, 1869

THE UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF CH'S M. Conrad. } No. 7653.

In this case the rule taken by defendant, on 4th April, 1868, on S. H. Torrey, esq., district attorney for the U. S., to show cause why certain errors alleged to exist in the return of the marshal to the order or warrant of seizure issued in this case, showing how the same was executed, should not be corrected and said return so amended as to make the same conform to the facts in this case, was, on motion of the defendant in P. P., with leave of the court, discontinued.

Clerk's certificate.

U. S. dist. court, dist. of Louisiana.

I certify that the foregoing 50 pages, together with the transcript, containing 68 pages, certified on 1st Aug., 1868, form a complete and correct transcript of the record in the case of The U. S. vs. 10 Lots of Ground, property of C. M. Conrad, No. 7653 of the docket.

In faith whereof I grant these presents, under my hand and seal of this our court, at New Orleans, this 24th December, 1869.
[SEAL.] (Signed) K. LOEW,
D'y Clerk.

157 *Writ of error, (in duplicate.)—Filed Jan.* 19, 1870.

UNITED STATES OF AMERICA:

The President of the United States to the honorable the judge of the district court of the United States holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the

judgment of a plea, which is in the said district court before you, between the United States of America and ten lots of ground, the property of C. M. Conrad, being No. 7653 of the docket of the said United States district court, a manifest error hath happened, to the great damage of the said C. M. Conrad, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the circuit court of the United States, together with this writ, so that you have the same at New Orleans on the fourth Monday of April next, in the circuit court to be then and there held, that, the record and proceedings aforesaid being inspected, the said circuit court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Salmon P. Chase, Chief-Justice of the
158 said Supreme Court of the United States, this 19th day of January, in the year of our Lord one thousand eight hundred and seventy.

[SEAL.] (S'g'd) D. URBAN,
Clerk of the United States Circuit Court for the District of Louisiana.

Bond for writ of error.—Filed Jan'y 19, 1870.

District court of the United States, district of Louisiana.

C. M. CONRAD *advs.* THE UNITED STATES. } No. 7653. Bond for writ of error.—Filed Jan'y 19, 1870.

Know all men by these presents that we, Charles M. Conrad as principal, and Duncan F. Kenner as his surety, are held and firmly bound unto the United States of America in the sum of five hundred dollars, to be paid to the United States of America, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, administrators, firmly by these presents, sealed with our seals this 14th day of January, 1870.

Whereas the above-named C. M. Conrad has prosecuted to the circuit court of the United States for the fifth circuit and district of Louisiana a writ of error to reverse the decree or judgment rendered by the district court of the United States for the eastern district of Louisiana in the above entitled suit:

Now, therefore, the condition of this obligation is such, that if the above named C. M. Conrad shall prosecute his said writ of error to effect and answer and pay all such costs as upon affirmance may
159 be adjudged against him if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

(S'g'd) DUNCAN F. KENNER. [L. S.]
(S'g'd) C. M. CONRAD. [L. S.]

Sealed and delivered in the presence of—
[L. S.] (S'g'd) J. A. CHARBONET.

The foregoing bond is approved.
[L. S.] (S'g'd) E. H. DURELL,
Judge of the District Court U. S. for District of Louisiana.

Citation in error.—Issued Jan. 19, 1870.

To the United States of America, greeting:

You are hereby cited and admonished to be and appear at a session of the circuit court of the United States for the fifth circuit and for the district of Louisiana, to be held at New Orleans, on the 4th Monday in April next, 1870, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the said district of Louisiana, wherein Charles M. Conrad is plaintiff and you, the said United States, are defendant in error, to show cause, if any there be, why the judgment or decree in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable E. H. Durell, one of the judges of said circuit court for the 5th circuit and the district of Louisiana, Jan'y 19, 1870.

[SEAL.] (S'g'd) E. H. DURELL,
Judge of the District Court of the U. S. for the District of Louisiana.

160 *Marshal's return.—Filed January 21, 1870.*

Received Jan'y 21st, 1870, by the U. S. marshal, and on the same day, month, and year served a copy of the within citation in error on the United States of America, through P. H. Morgan, United States district attorney for the district of Louisiana, by leaving the same at his office in the hands of J. W. Gurley, his clerk, a person over 14 years of age, known to me, said P. H. Morgan, att'y, being absent at the time of said service.

New Orleans, January 21st, 1870.

(S'g'd) F. A. WOOLFLEY,
D'y U. S. Marshal.

F. A. Woolfley, being sworn, says he is a deputy of the U. S. marshal, and that on the 21st Jan'y, 1870, he served a copy of the within citation in error on the defendant in the manner set out in his official return hereto attached.

(Signed) F. A. WOOLFLEY.

Sworn to and subscribed before me this 22d Jan'y, 1870.

(Signed) K. LOEW,
U. S. Com'r.

Alias citation in error.—Issued Jan 26th, 1870.

To the United States of America, greeting:

You are hereby cited and admonished to be and appear at a session of the circuit court of the United States for the fifth circuit and for the district of Louisiana, to be held at New Orleans on the 4th Monday of April next, 1870, pursuant to an writ of error filed in the clerk's office of the district court of the United States for the said district of Lou-
161 isiana, wherein Charles M. Conrad is plaintiff and you, the United States, are defendant in error, to show cause, if any there be, why the judgment or decree in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable E. H. Durell, one of the judges of said circuit court for the fifth circuit and district of Louisiana.

January 26th, 1870.

(Signed) E. H. DURELL,
Judge of the District Court of the U. S. for the District of Louisiana.

Marshal's return.

Received Jan'y 27th, 1870, by the U. S. marshal, and on the day of the same month and year served a copy of the within citation in error on the United States, through P. H. Morgan, its attorney for the district of Louisiana, by delivering the same to him, said att'y, in person.
New Orleans, Jan. 29th, 1870.
(S'g'd) F. A. WOOLFLEY,
D'y U. S. Marshal.

F. A. Woolfley, being sworn, says he is a deputy marshal, and that he has served a copy of the within citation on the defendant in error, as set forth in his official return on file.
Jan. 29th, 1870.
(S'g'd) F. A. WOOLFLEY.

Sworn to and subscribed before me on the day and year above written.
(S'g'd) K. LOEW,
U. S. Com'r.

Clerk's certificate.

United States district court, district of Louisiana, clerk's office.

I certify the foregoing to be true copies of the originals on file
162 and of record in the case of the U. S. vs. Ten Lots of Ground, the property of Charles M. Conrad, No. 7653 of the docket of said court.
In faith whereof I grant these presents under my signature and the seal of our said court, at New Orleans, this 2d February, A. D. 1870.
[SEAL.] (S'g'd) CHARLES CLAIBORNE,
Clerk,
By K. LOEW, *D'y Clk.*

Clerk's certificate.

STATE OF LOUISIANA,
Fifth District Court for the Parish of Orleans:

I, Louis Power, clerk of the fifth district court for the parish of Orleans, and as such duly commissioned and sworn, do hereby certify that the foregoing (139) one hundred and thirty-nine pages of the record No. 350 of the docket of the aforesaid court, and (155) one hundred and fifty-five pages of the record No. 7653 of the docket of the United States district court, district of Louisiana, contain a full and complete transcript of all the proceedings had, testimony and evidence adduced, and all the documents filed upon the trial of the cause wherein E. W. Burbank is plaintiff and C. A. and L. L. Conrad are defendants, the same being numbered No. 350 of the docket of the fifth district court for the parish of Orleans.
In testimony whereof I have hereunto set my hand and affixed the impress of the seal of the said court, at the city of New Orleans, this seventeenth day of February, in the year of our Lord one thousand eight hundred and seventy-one, and the ninety-fifth year of the Independence of the United States of America.
[SEAL.] (Signed) LOUIS POWER, *Clerk.*

State of Louisiana:

Proceedings had in the supreme court of the State of Louisiana, holding sessions at the city of New Orleans, in the case entitled and numbered:

E. W. BURBANK
vs.
C. A. & L. L. CONRAD. } No. 3255.

Transcript of appeal.

Filed Febr'y 20, 1871.
(Signed) M. P. JULIAN,
D'y Clerk.

Case called and continued.

(Extract from the minutes.)

TUESDAY, *March* 24th, 1874.

The court was duly opened. Present, their honors James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices. Absent, John T. Ludeling, chief-justice.

E. W. BURBANK
vs.
C. A. & L. L. BURBANK. } No. 3255.

This case was called for trial, and ordered by the court to be continued for argument to to-morrow, Wednesday, the 25th instant.

Case submitted.

(Extract from the minutes.)

WEDNESDAY, *March* 25, 1874.

The court was duly opened. Present, their honors James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan,
164 associate justices. Absent, John T. Ludeling, chief-justice.

E. W. BURBANK
vs.
C. A. & L. L. CONRAD. } No. 3255.

This case was called for resumption of trial, and having heard argument from William Reed Mills, esq., of counsel for plaintiff and appellee, and Charles A. Conrad, esq., on behalf of the defendants, appellants herein, the court took said case under advisement upon the briefs now on file for both parties.

Motion to fix case for re-argument.—Filed November 6, 1874.

E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 3255.

On motion of C. M. Conrad and Son, attorneys for defendants and appellants herein, and on showing to the court that the appeal in this

case, tried and submitted at the last term of this court, has not yet been decided, it is ordered that this appeal be fixed for re-argument orally and by brief.

Order assigning case for trial.

(Extract from the minutes.)

E. W. BURBANK
vs.
C. A. & L. L. CONRAD. } No. 3255.

FRIDAY, *November* 6, 1874.

The court was duly opened. Present, their honors Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices.
165 Absent, John T. Ludeling, chief-justice; James G. Taliaferro, associate justice.

E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 3255.

On motion of C. M. Conrad and Son, of counsel for defendants and appellants, it is ordered by the court that this case be set down for trial and re-argument, orally and by brief, on Wednesday, the 18th instant, after the cases already assigned for trial on that day shall have been disposed of.

Case continued.

(Extract from the minutes.)

WEDNESDAY, *November* 18, 1874.

The court was duly opened. Present, their honors John T. Ludeling, chief-justice, and James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices.

E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 3255.

This case was ordered by the court to be continued with preference.

Case called and continued.

(Extract from the minutes.)

WEDNESDAY, *December* 16, 1874.

The court was duly opened. Present, their honors James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices. Absent, John T. Ludeling, chief-justice.

166 E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 3255.

This case was called for trial, and having heard argument from William Reed Mills, esq., of counsel for plaintiff and appellee, and C. M.

Conrad, esq., of counsel for defendants and appellants, the court ordered said case to be continued for argument to to-morrow, Thursday, the 17th instant.

Case submitted.

(Extract from the minutes.)

THURSDAY, *December* 17, 1874.

The court was duly opened. Present, their honors James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices. Absent, John T. Ludeling, chief justice.

E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 3255.

This case was called for resumption of trial, and having heard argument from William Reed Mills, esq., of counsel for plaintiff and appellee, and C. A. Conrad, esq., on behalf of the defendants, appellants herein, the court took the same under advisement upon the briefs and papers now on file.

Decree of the court.

(Extract from the minutes.)

MONDAY, *February* 8, 1875.

This court was duly opened pursuant to adjournment. Present, their honors James G. Taliaferro, Rufus K. Howell, William G. Wyly,
167 Philip H. Morgan, associate justices. Absent, John T. Ludeling, chief-justice.

His honor Justice Wyly pronounced the judgment and decree of the court in the following case:

E. W. BURBANK
vs.
C. A. & L. L. *Burbank.* } No. 3255. On appeal from the fifth district court for the parish of Orleans.

It is ordered that the judgment herein be set aside and annulled, and it is decreed that plaintiff's demand be rejected and that the defendants have a valid title to the property described in the petition, and that they be put in possession thereof. It is further ordered that plaintiff pay costs of both courts.

Opinion of the court.—Filed February 8, 1875.

E. W. BURBANK
vs.
C. A. & L. L. *Burbank.* } No. 3255. Appeal from the fifth district court for the parish of Orleans.

M'r Justice WYLY:

The plaintiff, who purchased an undivided half of a warehouse and lot in Julia street, at a sale made by the marshal under a writ of venditioni exponas, issued by the United States district court in the confiscation proceedings of the United States vs. Ten Lots of Ground, alleged to be the property of Charles M. Conrad, brought this suit against the defendants, the owners of the other half of said property, for a partition

thereof. Alleging that said property cannot be divided in kind without deterioration of value, he prays for a partition by licitation.

168 The court rendered the judgment prayed for, and the defendants appeal.

Several interesting questions are presented in this case. One is: Assuming that the plaintiff bought at said sale, and the property so acquired belonged to Charles M. Conrad at the time it was condemned by the decree of the United States district court, under proceedings based on the act of July 17th, 1862, commonly known as the confiscation act, did the estate so acquired confer on the plaintiff the right to demand of the defendants, who are admitted to be the owners of the other half of the property, a partition by licitation? In other words, did the title acquired under said confiscation proceedings (which have frequently been held only to convey the life estate of the party accused) give the plaintiff the right to demand of the defendants, the admitted co-proprietors, the sale of the thing held in common, and a division of the proceeds?

Another and the most important question in the case is: Did the decree of condemnation and the sale by the marshall convey any title whatever to the plaintiff in and to the undivided half of said property, in view of the fact that prior to said confiscation proceedings, and prior to the act of July 17th, 1862, authorizing it, Charles M. Conrad had, by notarial act in the parish of S't Mary on 3d June, 1862, sold and conveyed said property to the defendants, the deed, however, although recorded in the parish of S't Mary, not being registered in the par-

169 ish of Orleans until long after said confiscation and sale?

As the view we have taken of this question will dispose of the case, we will confine our investigations to it.

And here we will remark that the act of July 17th, 1862, "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," was not intended to confiscate the property of rebels generally, but its operation was expressly confined to the property of persons of the classes mentioned in the fifth and other sections; it was only the property of such persons that the act proposed to confiscate. The language is, "that to insure the speedy termination of the present rebellion, it shall be the duty of the President of the United States to cause the seizure of all the estate and property, money, stocks, credits, and effects of pers ns hereinafter named in this section, and to apply and use the same, and the proceeds thereof, for the support of the Army of the United States."

As Charles M. Conrad was an offender of the class mentioned, the statute authorized the confiscation of his property, or the condemnation and sale thereof, for the period of his life. Bigelow vs. Forrest, 9 Wal., 347. By the decree of condemnation of the 3d of February, 1865, only such right or title as the said offender had passed to and vested in the United States, and this was the title conveyed to the plaintiff by the marshall on 29th March, 1865.

But Conrad at that time had no title to the property, having

170 sold it to the defendants by notarial act in the parish of S't Mary on 3d June, 1862, not only prior to the seizure, but anterior to the passage of the confiscation act itself. When this law was brought to bear against Charles M. Conrad, the object was to punish an offence committed by him subsequent to the enactment thereof, and the penalty was to vest in the United States the property of the offender during the period of his life.

The confiscation of the property in question was not intended by the

law, for it could inflict no punishment on Conrad, the alleged offender, because, for a valuable consideration, he had already sold it to the defendants, and as between the parties, without registry, the sale was perfect from the time of the execution thereof. Revised Code, 2456.

In regard to this property, the position of the United States was not that of a third party, dealing with Conrad on the faith of the title standing in his name on the public records, or that of a bidder at a judicial sale, who is induced to buy the property standing on the public records in the name of the defendant in execution. The failure of defendants to record their title in the parish of Orleans, as required by the registry-laws of the State, subjected them to the risk of losing it, if seized by a creditor of their vendor, or if sold or hypothecated by him to an innocent third party. But the title of the property was, nevertheless, in them from the time of the sale, and neither their vendor nor his heirs
171 could recover it from them. If he was honest and owed no debts, their title was safe; if the purchasers wished to avoid these contingencies, a compliance with the registry-laws of the State would have given them ample protection.

As to the United States, it was immaterial whether the defendants had recorded their title or not, the property in question belonged to them, and their title was not impaired by the proceedings under the act of July 17th, 1862, instituted to confiscate the property of Conrad for offences committed by him.

Assuming the theory of the plaintiff to be true, that the United States occupied the position of a third party in the sense of the statutes and jurisprudence of this State, and therefore the failure of the defendants to comply with our registry-laws subjected the property in question to the decree of condemnation, as the property of Charles M. Conrad, the effect will be that the plaintiff will hold it during the life of the offender, and then it will not pass to his heirs, as the law of July 17th, 1862, contemplates. It can never pass to the heirs of Charles M. Conrad, because heirs can only inherit what belonged to the deceased, and by succession they only succeed to his property. The property in question passed out of Charles M. Conrad when the notarial act of June 3d, 1862, was executed, and this act will be binding on his heirs whether recorded or not, but the deed was recorded in the parish of Orleans on 8th December, 1870.

172 The fee or title of the property is beyond doubt in the defendants, and was at the time of the confiscation proceedings and before; and when the life-estate of Charles M. Conrad, owned by the plaintiff, (if, under the circumstances, such could exist,) is carved out, or has terminated, the defendants will recover the property, not as heirs, but as vendees of Charles M. Conrad.

And the anomaly presented is that the plaintiff, claiming the life estate of Charles M. Conrad by virtue of the proceedings and sale under act July 17th, 1862, here sues the defendants, in whom the fee or title of the property is vested, for a partition by licitation, that is, for a sale of the thing and a division of the proceeds. And this life estate, assimilated by this court to the servitude of usufruct under our law, is fixed on the property in question in a proceeding to which its owners, the defendants, were not parties.

To fix this servitude on the property, of what avail was it that Charles M. Conrad was constructively before the court at the time of the decree of condemnation? He was not the owner. Its condemnation did not affect him, even as a warrantor. It was the defendants alone who could be affected by the forfeiture of the property, and, as they were not par-

ties to the proceedings, their title to the property was not divested by the decree of condemnation.

And the plaintiff in buying from the marshall was not in the position of a bidder at a sale under execution for property standing on the public records in the name of the defendant in execution. He is
173 charged with notice of the character of the decree under which the sale was made; that it was a confiscation sale, and he was bound to know its legal effect. (Bigelow vs. Forrest, 9 Wal., 347.) He bought only the title of the United States, which was not valid as regards the defendants. Our conclusion is that the property in question belongs to the defendants, and the plaintiff has no right to demand a partition thereof.

It is therefore ordered that the judgment herein be set aside and annulled, and it is decreed that plaintiff's demand be rejected, and that the defendants have a valid title to the property described in the petition, and that they be put in possession thereof. It is further ordered that the plaintiff pay costs of both courts.

Petition for rehearing.—Filed February 17th, 1875.

Supreme court of Louisiana.

E. W. BURBANK
vs.
C. A. AND L. L. CONRAD. } No. 3255.

To the hon. the said supreme court:

And now E. W. Burbank, plaintiff and appellee in the above entitled and numbered cause, respectfully petitions and prays for a rehearing in said cause, on the grounds and for the reasons in his printed brief set forth and filed herewith.

(Signed) FELLOWS AND MILLS,
Attorneys for E. W. Burbank.

174 *Plaintiff's grounds for rehearing.—Filed February 17th*, 1875.

Supreme court of Louisiana.

E. W. BURBANK, APPELLEE,
vs.
C. A. AND L. L. CONRAD, APPELLANTS. } No. 3255.

The Supreme Court of the United States has decided that the half-lot here in dispute was rightfully confiscated, and that the previous rights of any and all owners were divested; and the decree is res adjudicata, binding upon all the world, including C. A. and L. L. Conrad, and cannot be disturbed by this court.

This final decree was rendered in the case entitled "The United States, plaintiffs in error, vs. Charles M. Conrad, claimant of ten lots of ground," No. 283 of the docket of the Supreme Court of the United States. Justice Strong delivered the opinion of the court as follows: "These cases" [the one above entitled and that of The U. S. vs. Six Lots of Ground, F. H. Hatch, claimant,] "are, in all essential particulars, like the case of The United States vs. 844 Lots and Ten Squares of Ground, the property of John Slidell. What we have said in reference to that case is equally applicable to these. In each case the judgment of the circuit court is

reversed, and the cause is remanded with instructions to affirm the judgment or decree of the district court."

Turn to the case of The United States vs. 844 Lots, etc., and we find every point made by our opponents here finally decided against them; their defenses that the proceedings in rem were in admiralty; that the seizure was not by order of the President; that no legal seizure was ever made by the marshal; that no sufficient notice was given;
175 that there was no jury; that the property was not found to have belonged to a person who had engaged in rebellion; that the property did not belong to C. M. Conrad, the claimant, etc., etc., were all decided adversely.

Your honors have given ear to the last-named point, and, we respectfully think, have been misled by it to the decision rendered herein, affecting the res finally adjudicated by the Supreme Court of the United States. Your honors have decided as if the thing libelled and condemned were merely the interest of C. M. Conrad in the lot, and not the lot itself.

To this there are two answers, each conclusive:

I. The United States Supreme Court have found that this identical half-lot here in dispute belonged to Charles M. Conrad when it was condemned. They have ordered the affirmance of the decree of the district court, and said, (in Slidell's case and applied to this:) "It must be held that the default established the truth of all the material averments in the information. * * * A further objection urged against the adjudication of forfeiture made by the district court is, that it was made without any finding that the property belonged to John Slidell, (C. M. Conrad,) or any person included in either of the classes designated in the fifth and sixth sections of the confiscation act. This is a renewal of the complaint so earnestly pressed in Miller vs. The United States, and which we held to be without foundation. * * Having heard and considered evidence, it must be presumed the court found that the property belonged to a person engaged in the rebellion, or one who had given aid or comfort thereto, as well as all other facts necessary to the rendition of the judgment. This is a presumption always made in support of judgments of courts after their juris-
176 diction is made to appear."

This is said by the Supreme Court with the same record before them which the defendants have filed in this case—the record of the confiscation proceedings—which were taken to the United States Supreme Court upon writ of error; and what that court found themselves bound in law to presume and take for granted this court will concede, to wit, that this identical half-lot here in dispute, and which formed a part of the res in the confiscation case, has been found, by the final decree of a competent court, to have belonged to C. M. Conrad at the date of its forfeiture to the United States, or (what is held the same thing) to some person engaged in rebellion whose property was liable under the act. But, the libel distinctly alleging this half-lot to belong to C. M. Conrad, and the libel having been taken pro confesso, the court found this fact established.

II. The United States Supreme Court have held in the case of U. S., plaintiffs in error, vs. C. M. Conrad, claimant of ten lots of ground," that the proceedings were strictly in rem, and that the previous ownership of all persons whatever to the thing itself (that is, the 10 lots, including this half-lot) was divested, making the judgment res adjudicata against all persons, since all are parties and are concluded by the judgment.

The court say: "Everything necessary to a common-law proceeding in rem is found in the record. An information was filed, a monition

issued *issued*, a default taken, and, after consideration of the evidence, condemnation was adjudged. What was lacking in this to a common-law proceeding in rem? * * * We think the return of the marshal shows exact compliance with the order of court directing service and the manner in which it should be made. The order was that
177 notice be given in two ways to the owner or owners of the property, and all persons interested therein, requiring them to appear and answer the information. The first of these ways was by posting a copy on the front door of the court-house, and the second was by publication, viz, publication of the requirement to appear in the Era newspaper. In the execution of the order the marshal went beyond it. He posted copies of the information of the warrant and of the order of the judge, and he published the monition, which was a citation, as he was directed. The service was, therefore, sufficiently made."

After thus holding the proceedings to have been strictly in rem, and that the monition calling upon all persons," etc., was good legal citation to all, the court say, (quoting from Judge Sprague, in U. S. vs. The Lion, and applying to Slidell's and Conrad's confiscation cases,) that after all persons have been held in contumacy and default, "the court will, at least, examine the allegations of the libel to see if they are sufficient in law, the return of the marshal, and such affidavit or affidavits as the district attorney shall submit." And further quoting Judge Sprague with approval, Judge Strong added that "a wilful omission of the owners to answer might, of itself, satisfy the court that a forfeiture should be decreed. But without further consideration of this objection we refer to the opinion delivered in Miller vs. The U. S., to which we still adhere."

Failure to answer might be sufficient without any evidence whatever to justify forfeiture. How conclusive, then, a condemnation of the res upon evidence when neither claim nor answer came between the monition and the decree.

C. A. & L. L. Conrad are in contumacy and default; their ownership of the res, if it formerly existed, was divested by the decree and lodged in the United States of America.

178 With this decision of M'r Justice Strong before us, passing finally upon the very half-lot in dispute so as to make the judgment res adjudicata against all persons owning before the condemnation, it seems useless to adduce other authorities to show the force, effect, and conclusiveness of a judgment in rem against all the world; so we will merely cite the following few cases, without quoting from them. They stand uncontradicted by any other authority: 18 How., 140; 24 How., 456; 9 Cranch, 144; 3 Wheaton, 312; 4 Wallace, 427; 42 M'c, 444; 3 Hurband Nor., 617; 20 V't, 65; 1 Wheat., 9; 9 Cranch, 489; Miller *vs.* The United States, 11 Wallace, 268.

Let us now, for a moment, turn to the record of the proceedings of the United States district court, the same that was before the U. S. Supreme Court, and is now before your honors, to see what was libelled, what was the prayer, to whom the monition was addressed, who were held in contumacy, whose ownership was divested, what was condemned, what sold, who bought.

This one-half lot was libelled and accurately described; the libel, after declaring that "by reason of the premises the property herein described, and all the rights, title, interest, and estate of the said person or persons whose property is described herein, became and was forfeited to the United States, and ought to be condemned to their use," prays that "process of monition may issue against the said property and the owner and owners thereof," etc.; the monition cites and admonishes

"the owner or owners" to appear and show cause why the said described property should not be condemned and forfeited to the United States; contumacy and default were pronounced against "all persons," since none had claimed during the legal delay; the ownership of all persons holding title prior to the forfeiture was divested
179 by the decree; the 10 lots, including the one-half lot disputed herein, constituted the thing which was condemned; the identical res is what was sold; the plaintiff is the purchaser, so the record says without contradiction.

The mere interest of Charles M. Conrad was not the res. It might have been made so by the libellant, but your honors see (as the United States Supreme Court saw) that it was not so made. The thing proceeded against was the 10 lots, and the interest of C. M. Conrad therein, and the right, title, interest, and estate of all persons therein. This the libel, monition, and decree show beyond dispute.

The United States Supreme Court, through M'r Justice Strong, in the Slidell case, said that the name of the owner was only used to describe the property. In the case of Marcuard, growing out of the Slidell case, and decided at the same time, Judge Strong says that it was only the right of John Slidell, whatever that right was, that could be condemned and sold, and the sale, under the judgment of condemnation, in no degree disturbed the liens. Marcuard was asserting a lien or mortgage, not claiming ownership of the thing itself.

We understand that it was only the right of the owner (John Slidell having been found to be such, therefore only the right of Slidell, whether burdened by mortgage or not) which was condemned. This view reconciles what is here said of Slidell under the Marcuard intervention, to assert a lien on the thing, and what is said of Slidell in the main decision, as the person found by the court to be the owner of the thing. And it will be seen that, in the case of Day vs. Micou, the court held that while the res was condemned, and all ownership in the thing was forfeited, yet a lien resting upon the thing remained unimpaired. If this distinction made by the Supreme Court is sound, it will be
180 found fully to explain the apparent discrepancy.

Finally, Burbank, as a purchaser at a judicial sale, made from a decree at a time when the court had jurisdiction, acquired title which would hold good even if the decree had since been reversed, and which cannot be questioned collaterally nor otherwise, now that the decree has been affirmed. (McNutt vs. Turner, 15 Wallace, 365; Grignon's lessee vs. Astor, 2 Howard, 341; Voorhies vs. Bank of the United States, 10 Peters, 449; Foulke vs. Zimmerman, 14 Wallace, 113; Succession of Pinnigre, 25 L'a An., and many cases there cited.)

Whether the condemnation of this one-half lot was of the fee or of the life tenure we do not here discuss, but simply submit to your honors that, under the latter hypothesis based upon the case of Bigelow vs. French Forrest, the foregoing argument is undisturbed. If the joint resolution of Congress so modifies the confiscation act, that the libel, monition, decree, sale, etc., concerns only the life estate of the defaulting owner, the final decision of the United States Supreme Court in the Conrad case, covering this, is still res adjudicata against the younger Conrads to that extent.

In such case your honors might not be able to order the disputed property to be divided by licitation, but might have it separated in kind as the less of two evils, or it might possibly be necessary to dismiss the plaintiff's prayer as impracticable.

On these grounds we respectfully ask a rehearing.

(Signed) FELLOWS & MILLS.

181 *Rehearing refused.*

(Extract from the minutes.)

MONDAY, *April* 5, 1875.

The court was duly opened pursuant to adjournment.

Present, their honors John T. Ludeling, chief-justice; James G. Taliaferro, William G. Wyly, Philip H. Morgan, associate justices. Absent, Rufus K. Howell, associate justice.

His honor the chief-justice pronounced the judgment and decree of the court in the following case:

E. W. BURBANK
vs.
C. A. & L. L. *Burbank.* } No. 3255.

It is ordered that the rehearing applied for in this case be refused.

Petition for writ of error.—Filed April 9th, 1875.

Supreme court of Louisiana.

EDWARD W. BURBANK
vs.
CHA'S A. AND L. L. CONRAD.

To the honorable John T. Ludeling, chief-justice of the supreme court of Louisiana:

The petition of Edward W. Burbank, a resident of the parish of Louisiana, and plaintiff in a certain cause wherein petitioner, Edward W. Burbank, is plaintiff and Charles A. Conrad and L. L. Conrad are defendants, respectfully represent:

That he is aggrieved by a certain final judgment rendered in and by the supreme court of Louisiana, bearing date (having the date on
182 which a rehearing therein was refused) the fifth day of April, 1875, and being suit numbered 3255 of the docket of said supreme court, and he herein exhibits the record of said suit, for the purpose of a full understanding of the nature of the points upon which he specially feels aggrieved.

That it appears by said record that your petitioner claimed to be the owner of an undivided half of a certain real and immovable property situate in the parish of Orleans, and fully set forth in the petition of petitioner, filed in said suit and acquired by petitioner by virtue of an adjudication made by Cuthbert Bullitt, United States marshal, for the district of Louisiana, on the 22d March, 1865, and made in virtue of a writ of venditioni exponas issued by the United States circuit court for the district of Louisiana, and in the suit entitled and numbered United States vs. Ten Lots of Ground, the property of Charles M. Conrad, No. 7653. That in said suit of E. W. Burbank vs. Cha's A. and L. L. Conrad, petitioner, the said E. W. Burbank's title to said property under said marshal's adjudication was drawn in question by the pleadings made by said defendants, and which title was affirmed to the petitioner by the final judgment rendered by the fifth district court for the parish of Orleans, in which court the said suit was instituted, tried, and carried to final judgment.

That on appeal to the supreme court, said [illegible] question and determined by said supreme court, [illegible] the said final judgment of said fifth district court in favor of petitioner was reversed.

183 That in said suit the right of the said Chas A. and L. L. Conrad, defendants, to attack or question the validity of plaintiff (now petitioner's) title so acquired by virtue of marshal's adjudication, by district and supreme courts of the State of Louisiana was [illegible] tion, and which alleged right, though opposed by petitioner, was against him.

That petitioner in said suit pleaded the said adjudication by the marshal to petitioner, as well as the judgment of said United [illegible] circuit court in said suit of the United States vs. Ten Lots of Ground, property of Charles M. Conrad, as things adjudged between petitioner and said Charles A. and L. L. Conrad; and the force and authority of said adjudication and said judgment were denied him by the said final judgment of the supreme court of Louisiana.

Your petitioner represents that the amount in dispute in said suit No. 3255 exceeded the sum of two thousand dollars, exclusive of costs.

Wherefore petitioner prays your honor to allow a writ of error to the supreme court of the State of Louisiana, with supersedeas in said cause, and sign citations to said defendants in said cause, and to fix and approve the bond herewith submitted; and for such further order as justice and right may in the premises appertain.

(Signed) FELLOWS & MILLS, *Attys.*

Writ of error allowed and bond fixed at one thousand dollars, conditioned according to law.

(Signed) JNO. T. LUDELING,
Chief-Justice Supreme Court of Louisiana.

184 *Writ of error.*

EDWARD W. BURBANK, PLAINTIFF IN ERROR,
vs.
CHARLES A. AND L. L. CONRAD, DEFENDANTS in error.

Copy of writ of error lodged in the clerk's office of the supreme court of the State of Louisiana, in pursuance of the statute in such cases made and provided, this day of , one thousand eight hundred and seventy-five.

(Signed) FELLOWS & MILLS,
Attorneys of Plaintiff in Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Louisiana in and for the fifth circuit, and holding sessions in New Orleans, Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had on the suit between Edward W. Burbank, plaintiff, and Charles A. Conrad and Lawrence L. Conrad, defendants, a manifest error hath happened, to the great damage of the said Edward W. Burbank, as by his complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under
185 your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable , Chief-Justice of the said Supreme Court of the United States, this day of , in the year of our Lord one thousand eight hundred and seventy-five.

[SEAL.] (Signed) F. A. WOOLFLEY,
Clerk of the United States Circuit Court for the District of Louisiana.

Bond for writ of error.

EDWARD W. BURBANK
vs.
CHA'S A. & L. L. CONRAD.

Know all men by these presents that we, Edward W. Burbank as principal, and as sureties, are held and firmly bound unto Charles A. Conrad and L. L. Conrad in the full and just sum of one thousand dollars, to be paid to the said Charles A. Conrad and L. L. Conrad, their certain attorney, executors, administrators, or assigns; to which
186 payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this 9th day of April, in the year of our Lord one thousand eight hundred and seventy-five.

Whereas lately, at a term of the supreme court of the State of Louisiana, held at New Orleans, in a suit depending in said supreme court, wherein Edward W. Burbank was plaintiff and Charles A. Conrad and L. L. Conrad were defendants, judgment was rendered against the said E. W. Burbank; and the said E. W. Burbank having obtained a writ of error and filed a copy thereof in the clerk's office of the said supreme court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Charles A. Conrad and L. L. Conrad, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington, the second Monday of October next.

Now the condition of the above obligation is such, that if the said Edward W. Burbank shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) E. W. BURBANK. [L. S.]
" J. H. OGLESBY. [L. S.]

Sealed and delivered in the presence of—

Approved.
(Signed) JNO. T. LUDELING,
Chief-Justice of S. Court of Louisiana.

UNITED STATES OF AMERICA:

Supreme court of the State of Louisiana.

I, John Miller Howell, clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans, do hereby certify that the foregoing one hundred and eighty-six (186) pages, contain a full, true and complete copy of the transcript of the proceedings had in the first district court for the parish of Orleans, in a certain suit wherein E. W. Burbank was plaintiff and C. A. and L. L. Conrad were defendants, and also all the proceedings had in this supreme court on the appeal taken by said defendants, which appeal is now on the files thereof under No. 3255.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this sixteenth day of July, anno Domini one thousand eight hundred and seventy-five, and in the hundredth year of the Independence of the United States of America.

[SEAL.] JNO. M. HOWELL, *Clerk.*

UNITED STATES OF AMERICA:

Supreme court of the State of Louisiana.

188 I, John T. Ludeling, chief-justice of the supreme court of the State of Louisiana, do hereby certify that John Miller Howell is clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans; that the signature of John Miller Howell to the within certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all his official acts as such.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, this 15th day of July, A. D. 1875.

[SEAL.] JNO. T. LUDELING,
Chief-Justice of the Supreme Court of the State of Louisiana.

Supreme court of the State of Louisiana.

I, John Miller Howell, clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans, do hereby certify that the honorable John T. Ludeling is, and was at the time of signing the foregoing document, presiding judge of our supreme court, and that the signature affixed to the same is in the proper handwriting of him, the said judge.

In faith whereof I have hereunto set my hand and affixed the seal of this honorable court, at the city of New Orleans this the twentieth day of July, anno Domini, 1875.

[SEAL.] JNO. M. HOWELL, *Clerk.*

(Indorsement on cover:) No. 209. Edward W. Burbank, plaintiff in error, vs. Charles A. Conrad and L. L. Conrad. Louisiana sup. court. Filed 14th October, 1875.

UNITED STATES SUPREME COURT.

OCTOBER TERM, 1877.

EDWARD W. BURBANK,
PLAINTIFF IN ERROR,
vs.
CHARLES A. CONRAD & L. L. CONRAD.

No. 208.

By Writ of Error from Supreme Court of Louisiana.

BRIEF FOR EDWARD W. BURBANK, PLAINTIFF IN ERROR.

I.

This suit was instituted by the plaintiff in error as owner of an undivided half of a portion of ground in the city of New Orleans, by a title acquired from the United States, at a Marshal's sale under a writ of *venditioni exponas*, of the property condemned under the confiscation act of 17th July, 1862, (12 U. S. Statutes at Large, page

589,) passed upon by this Court in United States vs. Conrad, 20 Wallace, 115, against the defendants, as owners of the other half, for a partition, by licitation, (sale,) the property not being susceptible of a division in kind.

Record, page 1.

For plaintiff's title, of date March 29th, 1865, see Record, pages 4 and 5.

The defendants, March 1st, 1869, set up, by way of exception (demurrer) and answer, various grounds of defence; (see Record, pages 6 to 9;) but as all the grounds therein set up were passed upon adversely to their pretensions by this Court, and not noticed by the Supreme Court of Louisiana, we pass them by without further remark.

See the Confiscation Cases and United States vs. Conrad, 20 Wallace, 93 to 115.

Printed Record, pages 83 to 86.

II.

In a second supplemental answer, filed March 21st, 1870, defendants set up title in themselves to the undivided half claimed by plaintiff, by having "acquired" the same "from their father, Charles M. Conrad, by act before J. G. Parkinson, recorder of the Parish of St. Mary and ex officio notary public, dated June 3d, 1862;" and further aver, that if plaintiff ever purchased said property, as alleged in his petition, he purchased the same in bad faith, well knowing that it was not the property of C. M. Conrad, or of the United States, but was the property "of

defendants, and pray for judgment accordingly, with rents, revenues and damages."

Record, pages 13 and 14.

For "deed of sale of C. M. Conrad to C. A. and L. L. Conrad, June 3d, 1862," "registered in Conveyance Office in Book 99, folio 228, New Orleans, December 8, 1870,"

See Record, pages 33 and 34.

The same was offered in evidence January 2d, 1871.

Record, pages 24 and 25.

"It was admitted defendants both left New Orleans shortly before its capture by the United States forces, in April, 1862, and did not return to it before the month of July, 1865."

Record, page 34.

The judgment of the Court of the first instance, (Record, page 35,) being in favor of plaintiff, and defendants having appealed, was reversed by the Supreme Court of Louisiana, and the defendants decreed to "have a valid title to the property" in question, and to "be put in possession thereof."

Record, page 83.

III.

The one general question involved, is found in the opinion of the State Supreme Court, (Record, pages 83 to 86,) which, briefly stated, is as follows:

"Did the decree of condemnation and the sale by the marshal convey any title whatever to the plaintiff in and

to the undivided half of said property, in view of the fact that prior to said confiscation proceedings, and prior to the act of July 17th, 1862, authorizing it, Charles M. Conrad had, by notarial act in the Parish of St. Mary, on 3d June, 1862, sold and conveyed said property to the defendants, the deed, however, although recorded (registered) in the Parish of St. Mary, not being registered in the Parish of Orleans until long after said confiscation and sale."

Record, page 84.

We would add, that it was not recorded till long after the institution of this suit.

For dates, see Record, pages 1 and 24.

The averment in defendant's second supplemental answer, that plaintiff purchased "in bad faith, well knowing that it (the property) was not the property of C. M. Conrad or of the United States, but was the property of respondent and his brother," (Record, page 13,) cannot be seriously insisted on, in view of the fact that for more than five years from plaintiff's purchase, and for nearly two years from the institution of this suit, no notice of the title of defendants appeared upon record in the Parish of Orleans, wherein the property was situated.

"No notarial act concerning immovable property (real estate) shall have any effect against third persons, until the same shall have been deposited in the office of the parish recorder or register of conveyances of the parish where such immovable property is situated."

Ray's La. Civil Code, 2264

"All sales, contracts and judgments affecting immovable property, which shall not be so recorded, shall be utterly null and void, except between the parties thereto."

Ray's Civil Code, art. 2266.

These two provisions of the Louisiana Code not only completely answer the charge of "bad faith," and really show want of knowledge in the plaintiff, but completely shut the mouths of defendants against plaintiff's title.

Neither was it possible for the officers of the Government, or the plaintiff, to know what might have passed between the defendants and their father on June 3d, 1862, or subsequently, in the Parish of St. Mary or elsewhere, within the Confederate lines, to which they had repaired prior to the capture of New Orleans by the United States forces.

Record, page 34.

The defendants themselves could not have given the notice required by the Louisiana Code, for both they and their father were in the rebel service, within the rebel lines, from 1862 to the close of the war of the rebellion.

The United States and the plaintiff were, then, in every sense of the word, third parties, and without possible notice, and *a fortiori*, without the notice of registry of the pretended deed, required by law.

IV.

The only question, then, remaining is: What effect can be given to the pretended transfer of the property in

question, made on June 3d, 1862, (registered December 8th, 1870,) by C. M. Conrad to the defendants.

It is contended, under the decision on the claims of Marcuard et als, (20 Wallace, 114) affirming the decisions in Bigelow vs. Forest, (9 Wall. 339,) and Day vs. Micou, (18 Wall. 156,) that nothing passed by the sale of the United States to the plaintiff, by reason of the transfer in the parish of St. Mary, in June, 1862.

They say, "it was only the right of C. M. Conrad that could be condemned and sold." But in the "claims of Marcuard et als." and of "Day vs. Micou," the mortgages in question were in existence at the breaking out of the rebellion.

We are aware of no case in which this Court has held that a transfer or incumbrance of property, situated within the Federal lines, made by parties, at the time, outside of the Federal and within the rebel lines, could so change the ownership, as to take it from under the statute of July 17, 1862.

A fortiori; is there any ruling of this Court that any such attempted transfer, *not perfected by registration* until December 8, 1870, could so change the ownership of property condemned and sold prior to its registration.

The case presented, therefore, should the Court reach this far in the examination, is a novel one in confiscation cases and necessitates a resort, again, to elementary principles.

The United States, under the confiscation act, *had a claim* upon the property of all persons included within

the provisions of the 5th and 6th sections of that act. The National Government, then, was a third person, which, while confined, as intimated in the Marcuard case, to the actual property of the persons included in any of the classes named, yet it was to be governed, in asserting that claim, by the laws of the place where the property was situated.

These laws proclaimed the property in question, at the time of its seizure, condemnation and sale, to be the property of C. M. Conrad, one of a class whose property was subject to condemnation. The same law of the place proclaimed it to be his, aside from this condemnation, at the time of the purchase by the defendant. He examined the public records of the parish, (as the officers of the United States had done previous to seizure,) and found the last recorded title to be in the name of Charles M. Conrad. Thus the title stood, except as to the record of his purchase from the United States, until nearly two years afer the plaintiff instituted this suit against the defendants, the owners of the other undivided half, for a partition.

He purchased this property, then, on the 29th March, 1865, from the only possible, ostensible owner, the United States; property which it had previously taken and condemned as the property, standing on record as such, of C. M. Conrad.

It will not avail to say that previously even to the passage of the confiscation act, C. M. Conrad had transferred this property in fee to the defendants. The transfer was

not complete as to the United States or as to plaintiff, third persons, until recorded. The defendants did not record their attempted title because, being rebels, they could not come within the Federal lines, without renouncing their adhesion to and sympathy with the rebellion. Had they so renounced, their father remaining in adherence to the rebellion, the attempted transfer could not have been made, by reason of the rule of non-intercourse between enemies: had both father and sons renounced their adhesion to the rebellion, and yielded a proper obedience to their National Government, there would have been no confiscation.

V.

We are, finally, to consider whether the plaintiff and the United States can be regarded as third persons, and the effect of the non-registration of the transfer forming the basis of the defendants' pretensions.

These questions must be determined by the laws of Louisiana, whose provisions are here invoked by the defendants, and which, it may be added, are in full accord with the general principles of law everywhere.

Louisiana Code, article 3556, (3522,) paragraph 32, (the very last sentence in the Code,) defines "THIRD PERSONS:—With respect to a contract or judgment, third persons are all who are not parties to it."

The Supreme Court of Louisiana has held, that:

"Third parties are all persons who are not parties to the agreement, contract, or instrument of writing by

which their interest in the thing conveyed is sought to be effected."

Morrison vs. Trudeau, 1 N. S. (La.) 384.

McManus vs. Jewett, 6 La. 531.

"The general rule is, that all who are not parties to a contract or judgment are third persons."

Kittridge vs. Landry, 2 Rob. (La.) 79.

Williams vs. Hagan, 2 La. 125.

McGill vs. McGill, 2 Ann. (La.) 262.

AS TO THE EFFECT OF NON-REGISTRATION.

"No notarial act concerning immovable property (real estate) shall have any effect against third persons, until the same shall have been recorded in the office of the Parish Recorder or Register of Conveyances of the parish where such immovable property is situated."

"All sales, contracts and judgments, which shall not be so recorded, shall be utterly null and void, except between the parties thereto. The recording may be made at any time, but shall only affect third persons from the time of the recording."

Rev. Statntes of La. 1856, *verbo* Registry, page 453.

do. do. 1870, sects. 3188, 3189.

La. Civil Code, arts. 2262–2264. 2266.

All the effects contended for, from the above statutory enactments, have been repeatedly given by the Supreme Court of Louisiana.

It was held, in Williams vs. Hagan et al. 2 La. 125,

that "it is clear the defendants and appellees can have no title except that which results from their notarial act, and that does not give any as to *third persons*, [the italics are those of the Court,] but from the date of its registry. The plaintiff and appellant are such persons who have obtained a lien by attachment, with respect to the act of sale. 'Third persons, with regard to a contract or judgment, are all who were not parties to it.' C. C. 3522, No. 22."

This is also repeated and affirmed in the following, among numerous decisions:

Denton vs. Woods, 19 Ann. (La.) 356.

Smith vs. His Creditors, 21 Ann. (La.) 241.

Meyer & Brother vs. Simpson, Sheriff, et al. 7 N. S. (La.) 661.

Mary vs. Lamprè, 6 Rob. (La.) 314.

Syndic of McManus vs. Jewett, (cited above,) 6 La. 541.

Crear vs. Sowles, 2 La. Ann. 598.

Tear vs. Williams, id. 869.

Tulane vs. Levinson, id. 787.

Poydras vs. Laurens, 6 La. Ann. 772.

Swan vs. Moore, 14 La. Ann. 833.

This case differs from that of Conrad vs. Waples, argued at this term, in the fact, that in the case of Waples, the pretended act of transfer was recorded before seizure for confiscation, in this long subsequent thereto.

This Court held, in Pike vs. Wassall, 4 Otto, (94 U. S.) 712, affirming Wallock vs. Van. Riswick, 2 Otto, (92 U.

S.) 207, 208, that after a seizure and adjudicated condemnation and sale, under the confiscation act, there was "left in him no estate or interest of any description which he could convey by deed, and no power he could exercise in favor of another."

That the joint resolution was "intended for the benefit of his heirs exclusively, to enable them to take his inheritance after his death." We presume this must mean those who should be heirs *at his death*, not the presumptive heirs, while he was living.

"As to him, the forfeiture was complete and absolute; but the ownership after his death was in no wise affected, except by placing it beyond his control while living."

There being no legal or *completed* transfer by C. M. Conrad to the defendants, until long after the adjudication and sale of the property in question by the United States to the plaintiff, and the judgment of condemnation having been passed upon by this Court and found to have been regular and proper, that judgment and the sale under it cannot now be successfully attacked by an attempted, but incomplete and illegal, transfer, made within the Confederate lines during the war.

Respectfully submitted.

J. Q. A. FELLOWS,
Attorney for Plaintiff.

Supreme Court of the United States.

October Term, 1877.

EDWARD W. BURBANK,
PLAINTIFF IN ERROR,
vs.
CHARLES A. CONRAD ET AL.

No. 209.

In Error to the Supreme Court of Louisiana.

BRIEF FOR PLAINTIFF IN ERROR.

The plaintiff in error bought, at the confiscation sale of C. M. Conrad's property, the undivided half of a lot of ground in New Orleans, the other undivided half being the property of defendants in error. Dissatisfaction arising between these owners, Burbank brought a suit in the fifth district court of New Orleans against the two Conrads, praying for a decree of partition, an order for an inventory, and other interlocutory orders required in such an action.

Record, p. 1.

To this petition the defendants excepted, and answered that the alleged confiscation sale was a nullity; that C. M. Conrad had no right, title, or interest in the property;

that defendants were the true and sole owners, and they pray that plaintiff's demand be dismissed at his costs, and for further relief.

Record, p. 6, *et seq.;* also p. 12.

A second supplemental answer was filed averring that defendants acquired the lot and improvements from their father, Charles M. Conrad, by act before J. G. Parkerson, recorder of the parish of St. Mary, on June 3, 1862, and have ever since been, and are now, the true and lawful owners thereof; that plaintiff, if he ever bought as he alleges, bought in bad faith, well knowing that it was not the property of C. M. Conrad or of the United States, but was the property of respondent and his said brother; and, in conclusion, defendants pray that plaintiff's demand be rejected and respondents declared to be undivided half owners of the property, and put into possession thereof, and that Burbank be condemned to pay $10,000 damages for his illegal occupation, &c. This supplemental answer was adopted by the co-defendant, L. L. Conrad.

Record, pp. 12, 13, 14.

The exceptions were tried with the merits, and the State district court decreed a partition by licitation; and after an ineffectual rule for a new trial, the Conrads appealed to the supreme court of Louisiana, (Record, pp. 35, 36,) where this judgment was reversed, and it was decreed that plaintiff's demand be rejected, and that *defendants have a valid title to the property described in the petition, and that they be put in possession thereof.*

Burbank *vs.* Conrads, 27 La. An., p. 152.

The Federal question here presented is: Do the confis-

cation proceedings, instituted by the United States against the *locus in quo*, in the United States district court for Louisiana, confer any rights upon the purchaser at the judicial sale made under the proceedings?

The denial by the supreme court of Louisiana of all right under these proceedings in confiscation brings Burbank's case under R. S., 709.

Assignment of Errors.

First. The supreme court of Louisiana erred in avoiding Burbank's title to the property.

Second. And in decreeing that the defendants have a valid title to the property described in the petition, and ordering them to be put in possession.

Both parties claim under Charles M. Conrad. The defendants, by virtue of an authentic act of sale, passed June 3, 1862, in the parish St. Mary, La., and *not registered till December* 8, 1870, in the parish of New Orleans. The plaintiff claims by virtue of a sale made by the United States marshal in the course of legal proceedings in No. 7,653, U. S. *vs.* Ten lots of ground, the property of Charles M. Conrad.

20 Wallace, p. 116.

Burbank avers that the title of the Conrads is null and void, because—(*a.*) The subject-matter of the contract of June 3, 1862, the *locus in quo*, was not within the contractual power of the parties thereto. (*b.*) The contract itself was made for an unlawful purpose. (*c.*) And under the confiscation proceedings he, as a *bona-fide* purchaser for value, has a perfect title to the land in controversy.

The Conrads aver that Burbank's title is null and void,

because—(*a.*) The confiscation proceedings are directed solely against the interest which Charles M. Conrad had in the *locus in quo* at the date of the seizure, and only that interest was sold and conveyed by the United States marshal. (*b.*) But as all Charles M. Conrad's interest in the property had been conveyed to his sons prior to the passage of the confiscation act, the proceedings in confiscation are simply nullities, and conveyed nothing to Burbank.

The authentic act of June 3, 1862, (see Rec., p. 33,) is passed before James G. Parkerson, recorder and *ex officio* notary public for the parish of St. Mary. It is in form a sale from Charles M. Conrad to his two sons of a lot of ground in the city of New Orleans. All the parties to this authentic act were so-called Confederates—*i. e.*, enemies of the United States—vendor, vendees, witnesses, and notary. War was flagrant, and the subject-matter of the contract was within the Federal lines, and the contract was entered into in territory hostile to the United States.

The original of the act is not offered in evidence, but the certified copy of it. This suggests the objection that the officer preparing the act was acting under a void authority, and all his acts are null as evidence in all courts of the United States.

In this transfer not only were the interests of the United States involved, but the subject-matter of the contract was within their lines, and no dealing could take place in regard to it by enemies of the United States. If Conrad could sell to his sons, his sons could sell to third persons, and thus the means to carry on the war be obtained from the sale of property within the control of the United States. Of course, it is out of the question that the courts of the United States could recognize any such transactions. "An alien enemy cannot by the municipal law of England "sue for the recovery of a right claimed to be acquired by "him in actual war."

Douglas, 641, note to Cornu *vs.* Blackburn.
See Puffendorf's Law of Nature and of Nations, Volume 1, Book IV, Chap. VI, § XIV; Volume 2, Book VIII, Chap. VI, § XVII.

But by universal law a contract to transfer real-estate must be according to the laws of the place where situated. Had the enemies of the United States by the *lex rei sitæ*, on June 3, 1862, the legal capacity to make sales and transfers of real property located in the loyal States? Suppose that the recorder of deeds in Philadelphia had been called on to register a deed of sale of a lot in that city sold by C. M. Conrad to his two sons, the deed passed in St. Mary parish, La., and there acknowledged before an officer of the Confederacy, who, in time of peace, would have been entirely competent,—was he bound to register? And even if he did register, was any loyal citizen bound to notice the registry? We think not. So far as the insurgents were concerned, all the real-estate within the Federal lines was out of commerce. The obligation on the seller to deliver is to be performed where the land lies. No other place of delivery can be affirmed, with any reason, to to be within the intention of the parties, and had they fixed on the place of delivery outside of the Federal lines by the contract it would be an unreasonable and inoperative stipulation. The performance of the contract of sale and the validity of its subject-matter and purpose are clearly to be tested by the law of the place where situated, and by such a test the nullity of the contract is apparent.

Conrad was domiciled in New Orleans. Had he remained, he would have again become, in law, presumptively a citizen, and entitled as of course to dispose of and acquire property. But, as he left the city (see Rec., p. 34) and adhered to the insurgents, he was in the exact condition of

Desmare, whose rights are placed on the ground that it would be *an anomaly* to concede to the offender rights and immunities denied to loyal citizens.

See 93 U. S., p. 605.

Nor is it possible to attribute a lawful purpose to such a transaction. Whether the property remained in C. M. Conrad's name or in the names of his sons seems a matter of indifference to all parties but the United States. So, too, any distinction which might be drawn from an implied and superior degree of hostility to the Government existing in C. M. Conrad. If the simulated contract had the effect contended for, that is to relieve the property from confiscation, that was *per se* an unlawful purpose; and the *quo animo* results from the present use of the act of sale.

Immovable property in the insurgent district became out of commerce after the declaration of war *quoad* the United States; and as to the Confederates, just so soon as the Federal troops reoccupied the country, and just so long as they retained occupation. Had the territory been reconquered by the insurgents, then the transfer in question could have been perfected; and then, indeed, the validity of the contract might be conceded from its very beginning. For the presumption of law is that the contract was made with that tacit condition of fulfilment: "when the insurgents should be once more in possession by the right of "conquest" Now, this is the point of view from the Confederate side; and what is eminently fitting as public policy for them in time of war must necessarily be the very antagonistic doctrine of their opponents. It is neither decorous nor patriotic to permit contracts to be made in time of war, between enemies, subject to any such implied condition.

These views have been settled for a very long time, and were virtually adopted by this Court in—

Brown *vs.* United States, 8 Cranch, 110.

After the breaking out of hostilities between England and this country, in 1812, a quantity of logs belonging to British subjects was libelled as forfeited to the United States on April 19, 1813. The logs were claimed by Brown, an American citizen, by virtue of a purchase during the war from the British owners, November 7, 1812. This sale was not ignored, but the Court treated the logs as *still the property of the enemy.* It then decided:

First. That war confers the right of confiscation, the exercise of which depends on the national will.

Second. That the Legislature has not confiscated enemy property which was within the United States at the declaration of war.

Applying these principles, no doubt can exist that by the laws of war C. M. Conrad's property, on the reoccupation of New Orleans, was subject to the right of confiscation by the United States. And by the act of July 17, 1862, this right was put into operation, under which the property in dispute was legally confiscated.

The case is not one where the right of a belligerent at the breaking out of the war is involved; but one where *the possessions of insurgents* have come to the hands of the lawful Government *after* the recognition of hostilities and the extension of belligerent rights to the Confederates.

After thus coming into the hands of the Government these possessions are to be held until the will of the National Legislature determines whether or not they shall be

confiscated. That they should, after thus being reconquered, remain in the absolute ownership of the belligerent and liable to be used as means to raise money and carry on the war, is just as incredible as the interpretation attempted to be given to the confiscation act by Van Ryswick's counsel in 92 U. S. Rep., 202. The whole question is "one of "policy rather than of law. The rule which we apply to "the property of our enemy will be applied by him to the "property of our citizens. Like all other questions of "policy it is proper for the consideration of a department "which can modify it at will; not for the consideration of "a department which can pursue the law only as it is writ-"ten. It is proper for the consideration of the legislature, "not of the executive or judiciary."

From the moment the war commenced C. M. Conrad's property was liable to confiscation until proceeded against under the confiscation act. It was out of commerce; it was a portion of the *res hostiles;* he could neither sell nor deliver it. An attempt to sell and deliver would be in direct conflict with the principles prevailing in war-time, and the act of sale would be absolutely void in the courts of the *lex rei sitæ*, without regard to the provisions of the confiscation act.

Pandects 45, 1, 83, 5. *Sacram vel religiosam rem.*
Pothier's Pandects, Paris, 1823, vol. 18, p. 402. *De rebus extra commercium positis.*
1 Puffendorf, 624; 2 *Ibid*, 569.
Vattel, Book II, Chap. VII, sections 81 and 82.
Vattel, Book III, Chap. V, section 73 *et seq.*
Bynkershoek, chap. 7, p. 51.

The modern modifications in the practice of nations do

not impair in any way the efficiency and thoroughness of this doctrine.

Wheaton's International Law, 369.
1 Kent, p. 57.

In this regard civil wars are governed by the same rules as international wars.

Rose *vs.* Himely, 4 Cranch, 272.
The Santissima Trinidad, 7 Wheaton, 306.
The Amy Warwick, 2 Black, 636.

If the sale or exchange here in controversy be not absolutely void, then the opinion in Brown *vs.* United States proceeds on a false assumption, namely: "Can the pine "timber, *even admitting the property not to be changed by* "*the sale in November*, be condemned as prize of war?" It seems to us the whole opinion would be irrelevant, if the one fact on which it is based were absent from the case. If the property belonged to citizens of the United States, it could not be confiscated as hostile property. The first question in the case was, "To whom did the logs belong?"

On these principles we base the absolute nullity of the act of sale or exchange here relied on.

The opposite argument overlooks entirely the state of war, the nullity of the contract and its subject-matter, and takes a point of view from the statute alone. The Court *flagranti bello* recognizes the existence, validity, and operation of a contract made by enemies in a hostile country for the sale and transfer within the jurisdiction of the court of a subject-matter which was out of commerce, and possessed by the hostile antagonist of the contracting parties. The divergence of opinion is irreconcilable. Either the old authorities are valueless, or there is error in the opinion of the supreme court of Louisiana.

By the proceedings in the United States district court for Louisiana the land was "found to HAVE belonged to a "person engaged in rebellion, or who has given aid and "comfort thereto." Consequently, the forfeiture to the United States had taken place as soon as the act was committed, and the land having thus ceased to be his he was not competent to sell it.

U. S. *vs.* 1,960 Bags of Coffee, 8 Cranch, 398.
Wilkins and others *vs.* Despard, 5 Durnford and East, (Term Reports,) p. 113.
Gelston *vs.* Hoyt, 3 Wheaton, 311.
The Annandale—"The Law Reports," Division II to V, 1877, Part XII, December, Vol. II. Probate Division, p. 219.

Another view may be taken. The jurisdiction over the *locus in quo* alleged and found to be the property of an enemy was clearly in the United States district court for Louisiana. This court passed on all the merits of the case; there were applications for new trials, bills of review, appeals, and writs of error. The case was carried from the district court through the circuit court up to the United States Supreme Court, and the suit was a proceeding *in rem* under the legislation of the United States. The authority of the supreme court of Louisiana to decree these proceedings of a national court having unquestionable jurisdiction of the *res* absolutely void must be denied. The jurisdiction of the national court can only be impeached from *without*. The proceedings themselves are unimpeachable from *within*. The lot of ground was the *res* against which the suit was directed. "The decree "condemned, not the estate of C. M. Conrad, but, using "its own words,—'*the real property mentioned and de-*

"*scribed in the libel.*' It was a decree of confiscation of "the land."

Bigelow *vs.* Forrest, 9 Wall., 351.

Admitting, therefore, *a. g.*, that there was a defect in the proceedings, to wit, that Charles M. Conrad was not the owner, still the jurisdiction of the court to sell cannot be denied. Of this sale the real owner was regularly notified in the mode pointed out by law. He was bound by this notice, and, from the very nature of the proceeding *in rem*, all the interests of the real owner are implicated and involved in the fate of the "THING," if the legal constructive notices have been given. The court is bound by the delays granted by the statutes; these delays are a part of the due course of law. After trial, judgment, appeal, the case becomes *res judicata* and binding on the whole world,—and not merely on those who were actual parties. The decree determines the *status* of the property, that is, its hostile ownership; and the purchaser at the judicial sale is not bound to inquire into any other person's interest in and to the property as owner, but into that of the owner of record. Any other doctrine would be making these judicial sales "snares for the unwary."

Gelston *vs.* Hoyt, 3 Wheaton, p. 315.

We therefore respectfully pray your Honors to reverse the judgment complained of, with all general and equitable relief.

DURANT & HORNOR,
Attorneys for Durkee.

WASHINGTON, D. C., *December* 1, 1877.

Supreme Court of the U. S.

No. 209.

In Error to the Supreme Court of Louisiana.

EDWARD W. BURBANK, *Plaintiff in error,*

vs.

CHARLES A. CONRAD *and* L. L. CONRAD, *Defendants in error.*

BRIEF OF DEFENDANTS IN ERROR.

STATEMENT OF FACTS.

This suit was originally brought in the Fifth District Court for the Parish of Orleans, Louisiana, by the Plaintiff in Error against the Defendants in Error, for the purpose of procuring a partition of a certain lot of ground, with the improvements thereon, situated in New Orleans.

The Plaintiff claimed that he was owner and possessor of *one undivided half* of said lot, and alleged that the Defendants were the *owners* of the *other half* (Rec. p. 1).

The Plaintiff derives his title to the one-half claimed by him as follows:

In certain proceedings had in the U. S. District Court for the District of Louisiana, under the Confiscation Act of 17 July, 1862, entitled "The United States *vs.* Ten Lots of Ground, the Property of Charles M. Conrad," a decree was rendered (February 8, 1865, Rec. pp. 29, 30) whereby said half (among other property) was condemned as forfeited to the United States. Afterwards, in virtue of an order of said Court, the Marshal sold (22 March, 1865) all the property so condemned, and the Plaintiff was returned as the purchaser of the undivided half of

the particular lot in controversy (Plaintiff's Petition, Rec. p. 1, and Marshal's Return of Sale, Rec. p. 30) and received the Marshal's deed thereof (Rec. p. 4).

The Defendants in Error derive their title to the *whole lot*, from a sale *by public act*, made by Charles M. Conrad to them, before James G. Parkenson, Recorder, and *ex-officio* Notary Public of St. Mary's Parish, Louisiana, on the 3*d* day of *June*, 1862 (Act of Sale, Rec. p. 33).

The Defendants (for L. L. Conrad adopted C. A. Conrad's pleadings) in their answer (Rec. p. 6), supplemental answer (Rec. p. 12), and 2d supplemental answer (Rec. p. 13), showed various exceptions and defences, and asserted their own title to the whole lot. There was judgment against the Defendants (Rec. p. 35), and they appealed to the Supreme Court of Louisiana. By that Court the judgment of the lower Court was reversed, and judgment was rendered in favor of Defendants, who were decreed to have a valid title to the property in controversy, and possession was ordered to be given them (Decree and Opinion of the Court, Rec. pp. 83 to 86 inclusive). From this judgment the Plaintiff prayed a writ of error to the Supreme Court of Louisiana, which was allowed.

ARGUMENT.

There were various questions presented for decision by the Court below, namely: the right of the Plaintiff in Error to maintain an action of partition; the validity of the proceedings had in the United States District Court in the cause entitled "The United States *vs.* Ten Lots of Ground, the Property of Charles M. Conrad," besides other questions.

This Court (Conrad's Lots, 20 Wall. 115) has since then affirmed the validity of the proceedings last referred to *as against Charles M. Conrad*. Over the other questions presented below, not Federal questions, this Court has no jurisdiction, this case having been brought up by writ of error to the highest court of the State of Louisiana.

In such a case the jurisdiction of this Court is limited to the determination of the Federal questions raised by the Record. If such Federal questions have been rightfully decided by the Court below, this Court will affirm the judgment of such Court. If the Federal questions have been erroneously decided by the Court below, this Court will still affirm the judgment of such Court, provided it appears by an examination of the record that, independently of the Federal questions, there are other points sufficient to maintain the judgment of the State court.

Murdock *vs.* City of Memphis, 20 Wall. 614.

This being understood, let us ascertain what Federal questions are presented in the Record. In order to this, certain facts are necessary to be remembered:

1. The act of sale, under which Defendants claim, conveyed the *whole* lot to them (Record, p. 33). It was a "public act," that is, passed before a notary public and two witnesses.

The Plaintiff in Error has himself alleged the validity of this act, that is to say, he has alleged that the Defendants are the *owners of one undivided half* of the lot of which he claims the other half. Indeed, independently of such express allegation, his action of partition necessarily asserted the same thing. By the law of Louisiana, one who brings the action of partition *confesses the title* of his co-proprietor. Civil Code of Louisiana (*Ray's Revised Code*), Art. 1330.

This article, which refers to partition between *heirs*, is controlled by Art. 1290, which brings under the operation of Art. 1330 *all* cases of co-proprietorship.

Now it is clear that if this act of sale (on which their title rests) was valid so as to vest in the Defendants in Error *one-half* of the lot in question, it was valid to vest the *whole* lot in them.

The Plaintiff, therefore, has himself fully established the validity of the Defendants' title.

2. The Supreme Court of Louisiana in this case

(*a*) Has expressly affirmed the validity of this act of sale.

(*b*) Has declared it perfect between the parties *without registration* from the time of its execution, and has further declared the title to the property embraced in the act to have been in the Defendants from the time of sale to them.

(*c*) Has declared in this very case that the United States, in the proceedings heretofore referred to, entitled "The United States *vs.* Ten Lots of Ground, the Property of Charles M. Conrad," did *not* occupy the position of a "third person" under the statutes and jurisprudence of Louisiana (Opinion, Rec. pp. 83 to 86).

In our view, all of the points above referred to are matters of local law, and as such, not within the jurisdiction of this Court to question or review in a case brought before it by writ of error to a State court.

In cases of forfeiture the Government's position is not that of an individual looking to the public records for notice and protection. The pretension that it is, is wholly without support. Forfeiture, under the Act of July 17th, 1862, as always, was imposed as a punishment. It surely was not intended to punish Charles M. Conrad by confiscating the property of the Defendants in Error. In the language of Justice Story, "It would be most

unjust and absurd to suppose that the Legislature meant to confiscate the estate of B for the offence of A; to take one man's property for another man's offence or act. Unless the terms of an act were positive, direct, and absolute, no such construction ought, out of a decent respect for the Legislature, to be adopted by any court of law."

Borland *vs.* Dean, 4 Mason 181.

It is too well settled to be now questioned, that the Plaintiff in Error occupies precisely the position of the United States, and has no other or greater rights than the United States had at the time the decree of condemnation was passed, under which he claims.

By the 7th Section of the Confiscation Act of July 17th, 1862 (12 Stat. at Large, 590), property condemned under that Act became *vested* in the United States by the *decree of condemnation*. The only property which was or could be condemned in proceedings against Charles M. Conrad, was such property and estate as he had at the time of condemnation, and none other. No other person was or could be affected by those proceedings, or by the decree to which they led. This has been repeatedly decided by this Court. In Day *vs.* Micou this Court declared, "It was not *any* property in which the persons described in these two Sections (5th and 6th of Act of July 17, 1862) might have an interest, that was made subject to seizure, but it was *their* estate and property, *their* interest in it, whatever that interest might be. The act manifestly contemplated no seizure of anything more than that which belonged to the *offending persons*." And in the case of "Slidell's Land on the Claims of Marcuard *et al.*" it declared, "It was only the right of John Slidell, whatever that was, that could be condemned and sold. . . . By the decree of condemnation, the United States *succeeded to the position* of Slidell, and the sale had no other purpose or effect than to make the thing confiscated available for the uses designated by the Confiscation Act."

Day *vs.* Micou, 18 Wall. 160.

Slidell's Land Claims of Marcuard *et al.*, 20 Wall. 115.

Bigelow *vs.* Forrest, 9 Wall. 350, &c.

Pike *vs.* Wassell, 4 Otto 712.

McVeigh *vs.* U. S., 11 Wall. 266.

The Government sold *as owner*, and, of course, could sell only what it acquired by the decree of condemnation, and nothing more. In the case at bar, Charles M. Conrad had, on the 3d day of June, 1862, prior to the passage of the "Confiscation Act," and more than a year and a half prior to the rendering of the decree of condemnation (8 February, 1865, Rec. p. 52), conveyed all his interest and estate in the property in controversy

to the Defendants in Error. He therefore had no interest or estate in the property, and necessarily the decree of condemnation transmitted nothing to the Government. Of course, therefore, the Plaintiff in Error did and could acquire nothing at the Marshal's sale.

It follows, therefore, that the case of the Plaintiff in Error depends upon his ability to maintain the following proposition, namely:—

The act of sale of June 13, 1862, *from C. M. Conrad to the Defendants in Error, conveying to them the property embraced in this suit, being by the Plaintiff's own express allegations, by the confession involved in his action of partition, and by the judgment of the Supreme Court of Louisiana, declared to be valid and effectual to vest the property described in said act in the Defendants in Error from the time of its execution, which time was* PRIOR *to the* PASSAGE *of the "Confiscation Act" of* 17 *July*, 1862; *that,* NEVERTHELESS, *certain proceedings had under said "Confiscation Act," directed exclusively against Charles M. Conrad for offences committed by him, and the decree rendered pursuant to said proceedings, produced the legal effect of divesting the Defendants in Error of said property, and re-vesting the same in Charles M. Conrad—so as to subject it to confiscation under proceedings against* HIM.

And this we conceive to be the only *Federal question* presented by the record in this case.

The above proposition rests wholly upon the theory that the Act of 17th July, 1862, was intended to be and was retroactive in its effect. A few words will be sufficient to dispose of this theory.

Nowhere in the Act of 17th July, 1862, is there expressed or implied any such intention. On the contrary, its whole scope and tenor negative such an assumption. The policy of the Government, as expressed in that Act, plainly indicated a purpose to mitigate the rigor of the common law, which made decrees of forfeiture relate back to the time when the offence was committed, and which considered that the property proceeded against was transferred to the Government *ipso facto* by the commission of the offence, the object of the decree being simply to ascertain that the offence was committed; whereas the Act of 17th July, 1862, expressly provides that the property only vests in the Government *by the decree of condemnation* (Section 7). Section 5 provides that the President shall cause to be seized the property, estate, &c., of certain enumerated classes of persons who shall "*hereafter*" act in certain specified capacities; and that all "sales, transfers and conveyances of any such property" (*i. e.* property liable to seizure and condemnation under the Act) "*shall be*" null and void (Section 5, Sub-section 6). Statutes

at Large, p. 590). Any interpretation of this Act which would impose under its operation retroactive penalties, would be inconsistent alike with its terms and its spirit, inconsistent with the decisions of this Court, inconsistent with the Constitution of the United States. If such were the purpose of the Act, it would be clearly *ex post facto* and unconstitutional.

1 Kent's Com., 454, 455.
Society, &c., *vs.* Wheeler, 2 Gall. 139.
Calder *vs.* Ball, 3 Dall. 386.
Fletcher *vs.* Peck, 6 Cranch 138.
Cummings *vs.* State of Missouri, 4 Wall. 325.
U. S. Constitution, Art. 1, sec. 9.

Respectfully submitted,

C. M. CONRAD & C. A. CONRAD,
Of Counsel for L. L. Conrad, Def't in Error.

L. L. CONRAD,
Of Counsel for C. A. Conrad, Def't in Error.